

PB# 90-46

WIND IN THE WILLOWS

14-8-6

WIND IN THE WILLOWS - SITE PLAN #90-46
WALSH & PLYMPTON ST. (GREVAS & HILDRETH)

Disapproved 6/10/91
by Z.B.A.

Withdrawn from P.B. 7/3/91

General Receipt

11685

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, N. Y. 12550

October 18, 1990

Received of Wind In The Willows, Inc. \$ 25⁰⁰/₁₀₀Twenty-five and ⁰⁰/₁₀₀ DOLLARSFor Planning Board Application Fee (#90-46)

DISTRIBUTION

FUND	CODE	AMOUNT
CHECK #1052		\$25 ⁰⁰ / ₁₀₀

By Pauline D. TownsendTown Clerk

Title

Williamson Law Book Co., Rochester, N. Y. 14609

General Receipt

11686

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, N. Y. 12550

October 18, 1990

Received of Pauline D. Townsend, Town Clerk \$ 750⁰⁰/₁₀₀Seven Hundred Fifty and ⁰⁰/₁₀₀ DOLLARSFor P/B Site Plan Easement (#90-46) Wind In The Willows, Inc.

DISTRIBUTION

FUND	CODE	AMOUNT
CHECK #1051		\$750 ⁰⁰ / ₁₀₀

By Juan JappoDeputy Comptroller

Title

Williamson Law Book Co., Rochester, N. Y. 14609

FUND	CODE	AMOUNT
CHECK #1052		\$25.00

By Pauline B. Townsend
Town Clerk
 Title

Williamson Law Book Co., Rochester, N. Y. 14609

General Receipt

11686

TOWN OF NEW WINDSOR
 555 Union Avenue
 New Windsor, N. Y. 12550

October 18, 1990

Received of Pauline B. Townsend, Town Clerk \$ 750.00
Seven Hundred Fifty and 00/100 DOLLARS

For P/B Date Plan Escrow (#90-46) Wind In The Willows, Inc.

DISTRIBUTION

FUND	CODE	AMOUNT
CHECK #1051		\$750.00

By Juan Jappo
Deputy Comptroller
 Title

Williamson Law Book Co., Rochester, N. Y. 14609

Eng. fee
 \$591.50

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

February 27, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: Wind in the Willows
Planning Board File No. 90-46
ZBA File No. 90-38

Dear Carl:

The ZBA members have asked me to write to you concerning the above application. The matter initially was referred by the Planning Board to the ZBA for area variances.

The ZBA has considered this application during several preliminary meetings (copies of the relevant minutes are attached hereto). Based upon matters disclosed at those meetings, the ZBA members have decided, respectfully, to refer the matter back to the Planning Board.

Although the ZBA could have allowed the applicant to proceed with the area variance application only, the application raised so many other issues that the ZBA felt, and I believe that Richard J. Drake, Esq., the applicant's attorney, concurred, that it made more sense to resolve all issues before the ZBA in a single application, rather than a segmented application to the ZBA.

The crux of the ZBA members' concern is that the subject property is located in the PI zone and the applicant proposes to use the premises for a day care center and a school for up to 74 (or 78) children. Neither a day care center nor a school are listed as permitted uses, either by right or by special permit, in the PI zone. The applicant contends that its proposed use is a "professional business", or possibly an "office building for . . . business and professional offices . . . ", and thus permitted as of right. The ZBA members had some reservations

Mr. Carl Schiefer

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about whether "professional business" or an "office building for . . . business and professional offices . . . " in the Table of Use/Bulk Regulations were intended to include a day care center and a school.

Thus the ZBA members wondered if in fact the application should be referred to the ZBA for an interpretation and/or use variances, as well as the area variances which were the subject of the earlier referral.

The collective conscience of the ZBA members was most concerned about issues which the Planning Board normally will address upon site plan review: the health, safety and welfare of up to 74 (or 78) children and 25 staff in the subject building, the traffic at and near the subject site (see Chief Koury's December 10, 1990 correspondence attached), access by fire and emergency vehicles, and especially Fire Inspector Rodgers' rejection of the site plan on the grounds that the anticipated occupancy groups are not permitted in a 3-story structure of type 5b construction (see his October 30, 1990 correspondence attached).

After considering the issues raised in the enclosed minutes and correspondence, please feel free to refer the matter back to the ZBA on all grounds you deem appropriate.

If you, or the Planning Board members, have any questions in regard to this matter, I will be happy to discuss the same with you.

Very truly yours,



Daniel S. Lucia

DSL:rm
Enclosures

cc: ZBA members
Richard J. Drake, Esq.

TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

NOVEMBER 26, 1990.

MEMBERS PRESENT: RICHARD FENWICK, CHAIRMAN
JAMES NUGENT
JACK BABCOCK
DAN KONKOL
LAWRENCE TORLEY
TED TANNER
JACK FINNEGAN

ALSO PRESENT: PAT BARNHART, SECRETARY
MICHAEL BABCOCK, BUILDING INSPECTOR
DANIEL LUCIA, ESQ., ZONING BOARD OF APPEALS
ATTORNEY

MR. FENWICK: I'd like to call the regular meeting of the
Town of New Windsor Zoning Board of Appeals to order.

MR. TANNER: I'll make a motion to accept the October 22nd, 1990
minutes as distributed.

MR. TORLEY: I will second that.

ROLL CALL:

Mr. Finnegan	Aye
Mr. Tanner	Aye
Mr. Torley	Aye
Mr. Konkol	Aye
Mr. J. Babcock	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

rec'd
12/10/90

WIND IN THE WILLOWS

Mr. William Squires and Ms. Calais Guglielmi came before the Board.

MR. FENWICK: This is referred by the Planning Board for (1) 11,265 square foot lot area, (2) 10.7 feet front yard and (3) 2 feet 3 inch building height variances to construct day care center located at 257 Walsh Avenue in a PI zone.

MR. TORLEY: Is there a use variance required for this as well?

MR. LUCIA: That is a question for the Board. This is listed on the application as a day care center. The first use permitted in PI zone professional business which is apparently what it's been designated on the map. I am not sure if the Board automatically is going to come to the conclusion that a day care center is a professional business but it's a question that the Board ought to handle.

MR. TORLEY: The alternative is a permitted accessory-use, home professional office, includes teacher--

MR. J. BABCOCK: What is the zone presently?

MR. TORLEY: PI.

MR. SQUIRES: It's not occupied as a home with day care attached to it, it's a separate facility.

MR. TORLEY: Trying to see whether a use variance also is required.

MR. M. BABCOCK: I don't think Mr. Squires was at the original Planning Board meeting when this came in as a presubmission conference, there should be a copy of the minutes in the folder there. The Planning Board, since there's no bulk tables, any requirements for a day care center, the Planning Board thought that it would be considered a professional business. There's no day care center in NC, C, PI or any of them. If it was recognized in another zone, then we would say yes, she would need a use variance. Since it wasn't the plan, the Planning Board decided that it was a professional business and it should reflect in your minutes.

MR. J. BABCOCK: So you are saying that the Planning Board is looking at it as a professional business?

MR. M. BABCOCK: Yes, and they already told her that because she came into consider that, to make sure before they went any farther to make sure it would be a permitted use in that location

and they said that in their opinion, it was a permitted use as a professional business.

MR. LUCIA: Without commenting on the Planning Board's opinion, this Board is the only one that can determine whether or not it's in fact a professional business. That falls within the purview of the PI zone. We certainly can take the Planning Board's input on it but basically, this Board is the one that has to make that decision.

MR. J. BABCOCK: If we go in that direction, is it allowable in a PI zone?

MR. LUCIA: Yes, I suppose, put the applicant to the point of joining on this application interpretation question as to whether or not the phrase professional business in the first column of the PI table includes a day care center. We really have no guidance from the Town Board because the ordinance is completely silent on it so it really leaves it very much open to your decision whether you want to include it or not.

MR. J. BABCOCK: Would we be setting a precedent? -

MR. LUCIA: You most definitely would be and along with that precedent, similar type uses may be included. You can go from day care to part time nursery, that also is included in professional business.

MR. TORLEY: Public parks and playgrounds or outdoor recreational facilities.

MR. LUCIA: That is on a much larger lot area, isn't it?

MR. TORLEY: Yes but I mean that kind of use is conceived of in a PI zone.

MR. LUCIA: Requiring much greater area.

MR. TORLEY: Has there been any previous case where a day care center was up before any of the Board's?

MR. M. BABCOCK: No.

MR. FENWICK: In Butterhill.

MRS. BARNHARDT: Never came in here.

MR. FENWICK: Would you please present what the problem is? We have to get going on this.

MR. SQUIRES: The problems are and I have got the original variance required are for a deficient offset from Walsh Avenue

which requires 100 foot and was measured at 89.3 and a corresponding height variance required where 29 foot 9 inches is required and 32 foot exists. In addition, the plans that are prepared requested a lot area variance and it's where my being new to this, I happen to look this over and I see I have two concerns.

One this is a corner lot and there are therefore two, 100 foot offsets required and that needs variances. This one here and this one here, there's two that need variances. And secondly, the request for a lot area variance for 68,735 square foot of net, I don't think that is appropriate because that, the net area was something that was taken out from an easement here and I do believe the easement should not be included in calculating net area.

MR. M. BABCOCK: You're right. Right now, the new definition that the Town Board adopted for lot area you have to subtract all easements from that and that is where they come up with a net. Now we are using these numbers, the 68,735 was the numbers that Grevas & Hildreth supplied to us as net area subtracting the easement out of the square footage.

MR. SQUIRES: That is a new requirement?

MR. M. BABCOCK: Yes.

MR. J. BABCOCK: I'm sure that the previous owners or the present owners now if it's the same people were compensated for an easement in one way or another at the time the town went through there so that argument--

MR. SQUIRES: I didn't know where it was coming from so there are then five items, you need a variance on the net area, need a variance on the two offsets which are both less than 100 and therefore both of the height requirements are they, we're over in height on both areas by 2 feet.

MR. J. BABCOCK: I see a lot of notations on here play area, all these things, is this going to be another structure, puppet theater, is that another building?

MR. SQUIRES: No, that may be a--

MS. GUGLIELMI: No, it's not a building, it's similar to the outdoor puppet theater in Cornwall which is attached to their playground. Ours will not be attached. I mean, it's a two sided vertical with the little hole in it and you have, it will just be outside.

MR. J. BABCOCK: More familiar with the type of puppet shows, is it a building that's got a roof on it?

MS. GUGLIELMI: No walls, no roof, just a structure that will be probably be 4 inches wide.

MR. TANNER: Just a facade?

MS. GUGLIELMI: Yes, it will be seasonal, weather permitting, it's not a structure.

MR. KONKOL: How many children and how many staff?

MS. GUGLIELMI: There will be between 64 and 74 children. There will be including part time staff which will work at 30 hours to 20 hours a week, there will be 25 staff including myself so that ratio is about 4 to 1.

MR. KONKOL: The reason that I am asking that question, it's a high traffic area. The trucks come up there all the time from the felt mill also some of the oil trucks sneak down that way occassionally and--

MS. GUGLIELMI: Most of the activity is well beyond the front of the house and the site plan you will notice where the 6 foot perimeter fence is and most of the traffic actually is on 9W and River Road as far as minute by minute now.

MR. J. BABCOCK: You are going to be fencing the property in?

MS. GUGLIELMI: Yes.

MR. J. BABCOCK: All along Walsh Road and all along John Street?

MS. GUGLIELMI: Actually, the fence runs this area right here. This is the staff parking so the perimeter fence would begin over here.

MR. M. BABCOCK: It's on the papers on the plan, the fence. Not out front.

MS. GUGLIELMI: Any part where the cars are will not be a part of where the children will be.

MR. M. BABCOCK: One of the criteria of the fence was that it can't be placed in the front yard. It can't project closer to the street than what the front principal building is.

MS. GUGLIELMI: There will be a decorative fence, 3 1/2 feet, regular cable fence that will frame the front of the building for decorative purposes and also for emergency access for fire trucks and things like that so in other words, this decorative fence would be a little bit deceiving and would open up a corral gate which would let in a fire truck here or on this side here.

MR. TORLEY: I'm trying to see where you got the variance required, you show 68,700 and something net and you are asking the variance is 11,265, what are you applying that up to?

MR. M. BABCOCK: The PI zone. Again, we have to get back to what Dan was saying but the Planning Board was looking at this project based on a professional business which requires 80,000 square feet.

MR. J. BABCOCK: I agree with it being a professional business, there's no other, nothing else in our zoning regulations.

MR. M. BABCOCK: The net area, the total gross area of this property is 81,211 square feet according to her surveyor. When you subtract the definition of lot area today, you have to subtract all easements out of that so subtracting the easements on the top of the page coming up with 68,735, 68,735 minus 80,000 is 11,265.

MR. J. BABCOCK: That is what they are looking for, okay.

MR. FENWICK: So even though the law says we have to subtract the easements the size of the property is there, they still have in excess of 80,000 square feet, they are actually, the variance on that part is being caused by the easement.

MR. M. BABCOCK: Being caused by the easement and the new definition of a lot area. It's only for definition, the lot area is there, she does have 81,000 square feet which she's required 80.

MR. FENWICK: Where this house is located, now in looking at it as a professional use, the distance from the line, from the property line to the house would not meet any PI requirements, is that correct?

MR. M. BABCOCK: Yes.

MR. FENWICK: No matter what was in there, whether we are talking about a bunch of lawyers or doctors, it would still need a variance in order to use the existing house?

MR. M. BABCOCK: Right and now I understand--

MR. TORLEY: No, not if you go further down some of the lower areas it's only 40,000 square feet for like a truck terminal.

MR. FENWICK: Professional office use.

MR. M. BABCOCK: We need two. Mr. Squires pointed that out when we did it, we did a front yard and only the front yard off of Walsh Avenue. We didn't really write down the front yard off of

John Street so they would need two front yard variances.

MR. J. BABCOCK: Why do they need that because it's under PI zone?

MR. M. BABCOCK: Yes, it's a change of use to the building. The building that's there now as long as it can continue the use indefinitely but did not change to another use.

MR. FENWICK: Do you own this property, are you in contract?

MS. GUGLIELMI: We are in contract and the seller is selling due to hardship, it's owned by an estate.

MR. J. BABCOCK: I'm sure the Planning Board had asked all these questions, Mike, I didn't get an opportunity to read the minutes from the Planning Board but did they address what's going to go in the building or what they are going to do with the interior of the building as far as are they going to alter or change to make kitchens, sleeping quarters? Did anybody address that issue at the Planning Board?

MR. M. BABCOCK: Not to my knowledge, no.

MR. J. BABCOCK: I think it's important, it's a two story building. I have been in the building, I was in the building before it was on fire and when it was on fire so it's important that we know what's going to be in the building when it involves children. You are talking 60, 65 kids, maybe not all of them are going to be taking naps. Are you doing naps, play things inside on inclement weather?

MS. GUGLIELMI: Can I answer?

MR. FENWICK: Come on up.

MR. J. BABCOCK: I want to know what you are going to do to alter it to bring it up to the uniform fire prevention and building code?

MS. GUGLIELMI: We have a whole packet of what we have to do.

MR. J. BABCOCK: You are aware?

MS. GUGLIELMI: Most of them we are still reviewing. We have most of them. We have a report from the State Fire Inspector from the Social Services who uses the code, he's outlined what he wants us to do. It's being reviewed by Mr. Babcock and Mr. Hotaling and Mr. Rogers.

MR. SQUIRES: And they are going to--

MR. J. BABCOCK: We need to say no more, I feel comfortable.

MS. GUGLIELMI: We are using the basement, first and second floor and the attic will be closed off and rendered nonuseable and not used. We will have ages from 12 weeks to 12 years old. There's a small after school for 6 to 12 years olds. The 12 weeks to 3 years old will only occupy the basement and the first floor.

MR. J. BABCOCK: When you say the basement, is that underground?

MR. SQUIRES: The basement is one and it's fully underground for about 50% of it is garden style and the rest is walk-out.

MS. GUGLIELMI: And it's masonry not wood frame. The infants will only be on the first floor of which we will have five exits directly leading out of the building from the first floor. There are two exits in the basement which walk out to grade on the John Street side of the property. The second floor will occupy office, kindergarten and four year olds. There are currently two fire escapes from the building from each classroom which will be removed and fire stairs put on that directly go down to grade. There's a kitchen and the kitchen will be the same kitchen so we are not rearranging anything like that. We are just remodeling it. If you would like, putting in some new residential equipment and counters and cabinets and things like that to accomodate the food service. We do have an approval and what they did now, they stamped right on here the Orange County Environmental Health, they take care of day care, they have approved our site plan and kitchen plan for food service. That I have with me if you want to pass that around to look at that.

MR. J. BABCOCK: Are you licensed in the State of New York? Who's running this, you?

MS. GUGLIELMI: Yes, I will be the Executive Director, it's a not for profit corporation and there's a Board for I believe five, the Chairman of the Board is the President of the Gemark Corporation who's Mario Batalick (phonetic), he has a manufacturing plant in New Windsor and one in Newburgh. And there are other various Members of the Board. I have been hired as the Executive Director to operate the facility.

MR. J. BABCOCK: Do they have a certification, are they registered in the State?

MS. GUGLIELMI: We are more than halfway through that. Our plans have been approved through the Department of Social Services and they have made notations on it which will come back to us and then go to our architect. What needs to be now is we have to do the work and after all the work is done, then

they will come back through to make sure that we did it according to the way we said we were going to do it and at which point, we are issued a license which brings me up to the question about professional business. If the New York State Education Law since we do require a license to operate, puts us in the category of professional and since it's not charity, we do charge for this on a weekly basis competitive rates, puts us in the category of business so--

MR. LUCIA: That may well be true in the educational law. I only advise this Board on the zoning law. Certainly, if you come to the point of asking the Board for a public hearing, that's the evidence you may want to put in but the Board has to decide whether a use variance or an interpretation is needed.

MR. TORLEY: I like the idea. This is obviously the kind of thing we are really desperately needing.

MR. J. BABCOCK: Not me, my kids are all grown up.

MR. TORLEY: In any case, I think an interpretation on this might be in order as well.

MR. LUCIA: The applicant can choose whether she wants to go for a use variance or interpretation and that is something you might want to discuss with council if the Board decides that day care center is not a professional business, you might want to go for a use variance and try to hit that. The interpretation might be an iffy proposition simply because if it is an undefined term in the ordinance, day care center it's probably not a permitted use and the Board doesn't have a lot to go on in terms of parallels to say that we could interpret it as a professional office so that is something you might want to discuss with counsel before you come back, whether you want to go for an interpretation and/or combine interpretation and variance application.

MS. GUGLIELMI: That is if they don't approve it as a professional business?

MR. LUCIA: Yes.

MR. FINNEGAN: It will be open to anyone can take their children there, it will be open to the public?

MR. GUGLIELMI: Yes, it's open to the public. I mean, there's an application process and they, you know, if they don't pay, we have the right to withdraw the child but it is open to everyone. We also have a scholarship and financial aid fund. One of the other things we are working with manufacturing corporations in the area. They have and that was under the load agreement terms J.D.A. which we have been approved for

through funding through economic development. One of the criteria is that we work with manufacturing corporations. We have Hudson Valley Tree, Macbeth, American Felt & Filter, Service Merchandise is interested, the Gollop (phonetic) Corporation is interested which is Price Chopper, Newburgh Molding is interested and a lot of these corporations are corporations that have received J.D.A. funding in the past so they are familiar with the process and they are looking forward to working with us.

Back to your question about it being open to anyone, we will be instituting a scholarship and financial aid for working parents who are not making enough to pay the cost of a child care bill, even those parents who are making \$25,000 a year with two children would find it a little bit tight to pay the rates that it takes to operate a day care center. So, there's such organizations such as St. Lukes Hospital who may not be interested in paying a portion of their employee's child care bill but would donate \$1,000 or \$2,000 a year to a scholarship fund which we can then allocate to the working parents who would be in need of subsidy.

MR. J. BABCOCK: When you say other businesses are interested, when you say are interested, they do the same thing, they donate or pay for their workers children?

MS. GUGLIELMI: Each corporation we have left it open as far as the contracts are concerned. Each corporation would be dealing with it a little bit differently. The Hudson Valley Tree Corporation would either work one or two ways through a voucher system or they would have agreed to pay \$45 a week of the total bill for each employee. And then, deduct the balance from the employee's check and issue us one check. The Gollop Corporation which is Price Chopper on the other hand, does not wish to pay a portion of the employee's bill but they will guarantee hypothetically ten slots. If seven of the ten slots are used and three are not, they will pay us the difference for the unused slots. So, since this is virtually a new way, a lot of corporations as far as dealing with a day care center and even though they have addressed the fact that it is needed and there's definitely needs to be another one in the area, we have kind of left that agreement between them and their employees and we would put ourselves on the flexible end as long as we are guaranteed to get paid one way or the other.

MR. J. BABCOCK: I don't think--I think it was important whether or not it was open to the public, whether it was just social services type of setup or whatever. I think that was important for the area as well.

MR. SQUIRES: The Zoning Board is at this time not able to make a decision whether this is a professional business or not or--

MR. LUCIA: That is really up to the Board.

MR. TORLEY: I'm a little reluctant to just sort of without more information, I'd hate to see the precedent we are going to say by virtue of being a professional business, a day care center is a permitted use by right in any PI zone. I'm a little reluctant to do that.

MR. FENWICK: This has come up before basically the same type of thing, not the case, not the distances but when Mike comes to us with a situation and he said we are too close to the property line with a building and we don't have the maximum amount of square footage and Mike has already established that whatever that use is, if it's where it belongs, I don't want to step on your toes, Dan, as far as I'm concerned, the only thing that's been sent to us by the Planning Board, the Planning Board has referred to us square foot lot area, a front yard variance and a height variance. It hasn't mentioned anything to us about just get the use straightened out or anything else.

MR. J. BABCOCK: I thought there was--

MR. LUCIA: It was the Planning Board's opinion that it was a professional business and faced with that, I just pointed out it is not the Planning Board's prerogative to render an opinion, if there's a question, it comes to us.

MR. J. BABCOCK: I have no problem with that being professional office use because what else but I think I have the same problem as Larry does as setting a precedent for other PI zones of similar nature that is what scares me. Should it go to the Board with a recommendation from Planning and Zoning to address the issue and set something in the law but what do we do with the application in front of us?

MR. TORLEY: I don't want to make them wait until the Town Board decides what to do. I wanted to ask the attorney hypothetically, I know you guys love hypothetical situations. If the applicant came in and said I want to make this a use variance, I don't, I'm not going to call it professional office, I am not sure it really meets these criteria, do they then apply for a use variance and then therefore would not set a precedent for anybody else? He's attempting to make a day care center in a PI zone.

MR. LUCIA: It will set a precedent in the sense that if someone comes in with an application that's real close, you start drawing narrow lines, among hypotheticals, any action applies only to that property so the use variance would be unique to this property.

MR. TANNER: But we haven't been asked at this point.

MR. J. BABCOCK: They are asking us what do we want to do with it, what do we want to call it?

MR. TANNER: I think we are just being asked to rule on these.

MR. TORLEY: We can't ignore what is going on because the Planning Board says something, it's beyond their purview.

MR. LUCIA: That sets precedent if we say this is without defining it as a professional business, what else is a professional business.

MS. GUGLIELMI: What is a definition of a professional business?

MR. LUCIA: There's none, that's the problem, that's why you are going to the education laws, fine, that's the kind of input we'd need if we got into an interpretation but this Board has to decide whether or not in not defining professional business, the Town Board intended to include this sort of operation.

MR. SQUIRES: What I find interesting if the offsets that we came here were proper, I doubt if we would have been referred to the Zoning Board at all and we probably would have had an approval out of the Planning Board for a professional business use.

MR. TORLEY: You should have been referred here so even though because I don't think the Planning Board--

MR. FENWICK: Don't you understand what he is saying? If he makes square footage, if he meets the boundaries, if he meets it, they wouldn't have sent him here.

MR. J. BABCOCK: They'd have to give him a permitted use.

MR. FENWICK: They would have said this is a special business and this is what we are doing.

MR. TORLEY: I am not sure that's within their purview to do.

MR. FENWICK: Sure is.

MR. TORLEY: They're saying this is professional use.

MR. J. BABCOCK: No, they are not saying that.

MR. FENWICK: Yes, they are, they are saying this is a proposed professional use-day care center. Carl Schiefer signed it.

MR. TORLEY: It's the October 24th minutes.

MR. J. BABCOCK: I have no problem with the concept. The

problem I have is setting a precedent on a piece of PI property which will come up and haunt us from this day forward. I don't like to be in that predicament.

MR. TORLEY: Since the applicant is going to have to come back for a public hearing in any case, I am trying to avoid, I don't want to slow this process down other than it's necessary we are forced to. I would just as soon have them come back in either for an interpretation or a use variance as well just so we can avoid by inaction by setting a precedent, I don't think any of us would like to have somebody saying since they are considered professional business that means I am going to set my day care center up in the middle of these two factories and you can't do anything about it.

MS. GUGLIELMI: On the other side of it, there are, it's growing very rapidly, day care centers within industrial parks.

MR. LUCIA: There's certainly a need for it. The problem is that the Town Board in passing the zoning ordinance did not include day care centers any place. It was not something that they considered. So, we are, this Board is considering its first instance whether or not we want to include that within the broad definition or lack of definition of professional office or whether you want to come in for a use variance.

MR. TORLEY: If you come in for a use variance, it says you are going to make it for this particular property. If it is just made as a wide spread yes day care center is professional office then you lose any control over it.

MS. GUGLIELMI: Can we get that voted for out of the way?

MR. FENWICK: No.

MR. TORLEY: You have to come back for the public hearing for the variance anyway.

MR. FENWICK: Let me lay something on the Board here. Interpretation is one thing and we can discuss that all night long. When it comes up to a vote, it would just come up to a vote. It has to have a certain amount of reasoning but that is all we need, reasoning for interpretation, watch out for use variance, watch out for everything, I mean, it seems like everybody on the Board is kind of for this. That's what I get the feeling if we go to a use variance, all of the criteria they got to meet gets real tough, it gets real tough because then it's why can't this be used for something else? We don't know why not, it's going to go right on down the line.

MR. J. BABCOCK: How long has the property been on the market?

MR. FENWICK: It's going to get tough.

MR. TORLEY: If there's an interpretation, interpretation also requires a public hearing, right?

MR. FENWICK: That's correct.

MR. TORLEY: And it can be combined with an area variance request as well.

MR. LUCIA: Could be combined or in the alternative with the use variance request.

MR. TORLEY: Then again is the hypothetical question can an interpretation can be so phrased as to be restrictive to this kind of thing or are we left again by making interpretation that a day care center is a professional business. We open it up wide.

MR. LUCIA: Open it up because you are interpreting the ordinance not just the ordinance as it applies to this particular property.

MR. KONKOL: One other question we are getting away from the point of the public safety here. You are putting in a lot of children here, staff members in an area that we know is a traffic area. I'd like to see our town police department give us a study like they did over on somebody elses and they did a very nice job of it, they talked about the width of the road, the accidents per se. Do you recall what I'm talking about and I think this is a real big issue that everybody is letting slip through and in that area, like I said--

MS. GUGLIELMI: They are running around in the back.

MR. KONKOL: There have to be young mothers who are on their way to work and they are going to zip in the streets and maybe going the wrong way, it happens right there by Papanroff's (phonetic) where they made that, that little mess, I have seen trucks come out and go right across.

MS. GUGLIELMI: We are in a much better situation than somebody like Butterhill Nursery.

MR. KONKOL: I see there was a nursery on 94 that's now empty now it was the O'Neil.

MS. GUGLIELMI: That is closer to a busier road than this piece of property is.

MR. KONKOL: I don't know about that but I'd still like to see the police department give us a study on safety.

MR. TORLEY: The overriding concern of the Board has to be, if anything, is not the individual property but what is the effect of the health and safety of the community as a whole. That is in my mind, that is our first criteria beyond anybody else's property so I agree then the idea of somebody, of the police department or the traffic people establishing the safety figures. But I think the little kids, mothers, going back and forth we should address that problem.

MR. M. BABCOCK: Just one thing for the Board. As far as the professional business if it is an interpretation that a day care center would be allowed in a professional business that would be allowed anywhere in the town except a residential zone because any one of the bulk regulations I just went through them says professional business which fits an interpretation that would open it up to anywhere in New Windsor, really.

MR. TORLEY: I question I have for three criteria for a use variance that they have to meet, do all three of those criteria have to bear equal weight? If we said something is a tremendously positive impact on the health, welfare and safety of the town--

MR. FENWICK: That's not part of the use, that doesn't even come into affect.

MR. TORLEY: Wouldn't approve something if I don't think it's not safe.

MR. FENWICK: You are thinking of it in the positive end and that doesn't come into the use end of it at all.

MR. TORLEY: I am saying we cannot consider a positive impact as opposed to just merely the lack of an adverse impact?

MR. FENWICK: What is a positive impact, you are allowing them to do something that doesn't even come into, it doesn't even come into it.

MR. M. BABCOCK: One other thing I'd like to bring out if it's considered and she does consult with her counsel or whatever and finds out that she does want to go for a use variance, we should some way decide what of these lines in a PI zone would be used and also one of the criterias would be parking. Right now, business use is 1 for 200 square foot. If it is a use variance, you wouldn't be using that anymore. It would be up to the discretion of the Board so that is something that the Board should think about when they are making their decision.

MR. J. BABCOCK: We have to go back and look at if there's nothing that is in our zoning regulations why the hell are we

allowing it? That is the other thing.

MR. LUCIA: That was the reason you might want to consult with counsel to determine whether she wants to go for a use variance or an interpretation because the interpretation leaves it wide open where the Town Board has never considered this, that might be a question we really can't interpret. We might say we just might have to refer it back to the Town Board on the basis that the ordinance didn't envision this and we are not going to write the ordinance. That is our prerogative.

MS. GUGLIELMI: That it can't be done in New Windsor or at all?

MR. LUCIA: Unless the Town Board amends the zoning ordinance to provide in some zone for a day care center or alternatively include it within a definition of professional business or some other term that's already in the ordinance.

MR. M. BABCOCK: Or a use variance.

MR. LUCIA: That certainly is always open to you.

MR. TORLEY: I must disagree. I don't think that we are the zoning code, I don't think was meant to be totally inclusive and anything that wasn't mentioned to the letter is totally forbidden. I think we have to have some idea of interpretation of the meaning and the intent of the Town Board.

MR. LUCIA: All uses are prohibited unless they are specifically permitted under general zoning ordinance. If she's coming in with something that's not defined and considering for interpretation, we need to find something to hang our hats on to say that is similar use.

MS. GUGLIELMI: But I am coming in as a professional business and you have to--why am I not a professional business, that is the question.

MR. LUCIA: That is the argument you have to make but the Town Board did not define professional business so that leaves it very much open.

MS. GUGLIELMI: Isn't everyone else, don't they have the same problem then?

MR. J. BABCOCK: Not everybody comes in for a day care center.

MR. SQUIRES: Somebody comes in for something that a professional business but is not defined, electrolysis company.

MR. LUCIA: It's basically up to the way the Board feels when they see the application.

MS. GUGLIELMI: How do you guys feel?

MR. TORLEY: This is the kind of thing I'd like to, I'd love to see here.

MR. J. BABCOCK: I don't think there's anybody that disagrees with the concept.

MR. TORLEY: I want to make sure that we don't set such a precedent.

MR. FENWICK: Forget about setting a precedent. I am going to ask the attorney, there are three criteria you have to meet for a use variance which if we get back to right down to the bottom line and we are saying forget about interpretation because we don't want to step on the town's toes or anything else like that and we are going for a use variance, I'm going to ask the attorney to explain to you the three criteria you have to meet for a use variance. If you think you can meet those, I'd say that is the best way to go. I would say that is the way to go. I will let him explain to you. I think you could probably meet them, it's harder than just an interpretation but the way that this Board is going with interpretation we don't want to write the law for the town which is what will happen, okay, so I'm going to shift it over to Dan.

MR. LUCIA: In order for this Board to grant you a use variance, they have to make a finding of unnecessary hardship. These is a three part test to prove unnecessary hardship and the Board has to find each of the three parts. The land cannot yield a reasonable return if used for any purpose allowed in the zone. You have a relatively small piece of land in a PI zone so you have to determine that it just reasonably can't be used for any permitted PI purposes. Second is your plight is unique, you really have to examine the location of that piece of land, the building that's on it, the topo, whatever as opposed to the rest of the land in that PI zone to know why this piece is unique, that you have problems using this land for permitted purposes that are not shared by all other similiarly situated PI parcels. The third one is the use variance request shall not alter the essential character of the locality. That really, you are going to have to look around at what else is developed in the PI zone. You may have some pre-existing nonconforming uses. You probably have some conforming PI uses so really it is based on what you find out. The Board has to find all these, all three of these tests in your favor. It's not an easy hurdle.

MS. GUGLIELMI: I have to say why I am not a professional business in other words.

MR. LUCIA: That is to say you are coming in for something that is not defined in the ordinance and you are looking for a use

variance.

MS. GUGLIELMI: But defined in the ordinance as a professional business undefined.

MR. LUCIA: The phrase in the ordinance is professional business, that is an undefined term. Alternatively and this is the sort of thing you want to consult with counsel, you could come for an interpretation and now then you use what you can use, the education law, use whatever you have to say why it is professional business.

MR. SQUIRES: I think first criteria is impossible, that can be used as a professional office for lawyers, doctors.

MR. LUCIA: That is basically dollars and cents type argument.

MR. SQUIRES: But has nothing to do with the purchaser, it has to do with the use.

MR. LUCIA: She mentioned the seller has some sort of a hardship. Maybe the property has been on the market for some period of time and they haven't been able to sell it for what is more easily a professional office, doctor, lawyer or whatever so we can, you can prove it so that might require real estate appraisals.

MR. TORLEY: Even if you sold it for most all permitted uses, they'd require a variance in any case, that's part of it, even if any virtually any PI use would require a variance in any case.

MR. FENWICK: Do you know what the other front yard variance is supposed to be?

MR. M. BABCOCK: Yes, it's clear on the map, the requirement would be 100, they are providing 93, they need a variance of 7 feet and that is off John Street.

MR. FENWICK: And the other front is 10.7 feet.

MR. M. BABCOCK: Yes.

MS. GUGLIELMI: Why can't we go with the Planning Board's determination as professional business?

MR. LUCIA: The other alternative that was alluded to, you could go to the Town Board and say look, we have a problem here, we have what everybody contends is a need to put in a day care center, will you amend your ordinance to include day care centers within a professional office or give us a line in some zoning district saying that a day care center is a permitted use. The Town Board always has the power to amend the

ordinance.

MS. GUGLIELMI: You are saying the Planning Board was wrong?

MR. LUCIA: I am not saying the Planning Board was wrong but the discussion opened up because we only tonight have received the Planning Board minutes so no one really knew before tonight's meeting what happened and Mr. Babcock indicated that the Planning Board gave the opinion that this was a professional business, okay, and that put the issue squarely before us. This Board is the only agency of the town that can interpret the zoning ordinance. The Planning Board's opinion is nothing more than that, an opinion, okay, it's not the definition of what the law in town is.

MS. GUGLIELMI: They didn't send us before you to determine a use?

MR. LUCIA: That is correct because it was their opinion that it was a professional business but their opinion is not the answer.

MS. GUGLIELMI: You are saying they should have added use in their list of variances?

MR. LUCIA: Something.

MR. TORLEY: If we go for an interpretation and we say we interpret that this is in fact a professional use then with, then a recommendation to the Town Board saying essentially help and the Town Board in its wisdom could redefine professional use and specify conditions for a day care center or words applicable with lot sizes therefore that would override our interpretation naturally although--

MR. LUCIA: Not as to this property.

MR. TORLEY: If we go for an interpretation with a recommendation for the Town Board to act, we do not therefore automatically open the flood gates providing the Town Board acts.

MR. FENWICK: That would be true provided the Town Board acts so that is where we are at. They have said you have done a nice thing here that is it, that is fine, we can't depend on that. That is, you just can't do that.

MR. TORLEY: I am thinking--

MR. FENWICK: I know what you are trying to do. You are trying to cover your butt but it's already gone.

MR. TORLEY: I couldn't care who gets mad at me. I like this

idea. I want to see it moved. I see the difficulty in trying to impartially rule that it meets the criteria for a use variance. If we therefore go for an interpretation yielding to the Town Board saying we think this is what you meant correct us if we are wrong, which is really our task, then I think we will have met our responsibilities here, both to the town in general and to these owners.

MR. TANNER: Can she go right around us and to the Town Board and present her case and say hey, give me some help and--

MR. TORLEY: How long will that take?

MR. KONKOL: It would be the fastest way they can go in and say there's nothing in the book, what can you do, we have got all this other background which they have from the different agencies. The way this Board, I don't think anybody here is going to get in agreement.

MR. TORLEY: If they came in for a public hearing for an area variance and for an interpretation on the code as to meet a day care center is within the contained within the supposed definition of office that could occur as soon as they got the paperwork in.

MR. J. BABCOCK: Say professional business is not offices.

MRS. BARNHARDT: You are changing the zoning.

MR. TORLEY: It could occur as rapidly as any other public hearing.

MR. TANNER: Practically, it doesn't work that way.

MR. FINNEGAN: Would take longer?

MR. TORLEY: Yes.

MR. FINNEGAN: That is what they are saving.

MS. GUGLIELMI: If you go for the use variance when I come back for the public hearing, that is all done in one shot?

MR. NUCENT: That is right.

MS. GUGLIELMI: Is that the beginning of December?

MR. NUCENT: You have got a lot of work to do between now and then.

MR. FENWICK: I think it's pointless to ask for an interpretation.

MR. J. BABCOCK: I don't feel that we can interpret it because we are rewriting the zoning and I don't feel that--

MR. NUGENT: We are to uphold it, no rewrite it.

MR. TORLEY: We make the interpretations.

MR. J. BABCOCK: You make interpretations based on the zoning regulations. We don't have nothing in the zoning here, what the hell am I going to interpret something that is not here? I can't interpret something that is not in the zoning regulations. Even if it was somewhere in there as an iffy then all right then we have something to hang our hat on.

MR. FENWICK: I'd like to make a recommendation. It seems like the feeling we are getting is more for a use variance. I think this is going to do what you want it to do. If you can answer the questions that the lawyer has put, our attorney has put before you, okay. Now, the other thing that I don't want hearing is the night of the public hearing these reasons I hate to put you off but I think if that is the feeling of the Board is that we go to a preliminary hearing now we have all our ducks in a row just like Jack has said many times, we want to know them before we get there. We don't want to be standing here at a public hearing in a big argument with, we don't like this, you don't like that, we want to get this squared away before we get there and you don't look bad and we don't look bad, maybe nobody is going to show up, there's a good chance nobody's going to show up on this but I'd rather not be standing here getting surprises. We'd like to help you out. I think that is what we are going to go for. We are going to be able to help you out if we go for the use variance situation.

MR. J. BABCOCK: They will have to do their homework.

MR. FENWICK: That is right, you are going to have to dot your i's and cross your t's and we are going to have to know it ahead of time. We can't go into a public hearing with new information that we did not have before.

MR. TORLEY: If we do that setup preliminary hearing that means the public hearing could be no earlier than January 14th.

MR. KONKOL: They should come back at a second preliminary and I'd like to see the town police report on the traffic. I think that is critical part of this.

MS. GUCLIELMI: We may lose the property if we have to wait that long. We have an extension for 30 days and it does not include that far into January.

MR. FENWICK: What are you going to lose the property to?

MS. GUGLIELMI: We have a contract unless their attorneys agree to extend it, we might not be able, you know--

MR. FENWICK: We may be looking at shooting down the use variance right now if there's somebody else that's looking at this piece of property and is going to hold it into the use.

MS. GUGLIELMI: We have been in contract for this since the middle of the summer.

MR. J. BABCOCK: You have been in contract since the middle of the summer?

MS. GUGLIELMI: Yes.

MR. J. BABCOCK: And you are worried whether you are going to get in for this period of time?

MS. GUGLIELMI: I have been going to the Planning Board and everybody says no problem and I didn't anticipate these problems now I am five steps behind. If I get everything before you to review all of the t's crossed and the i's dotted--

MR. M. BABCOCK: The formal decision won't even, if they had a public hearing next meeting, the formal decision would not be done until the meeting in January so it's still even if you had a public hearing--

MR. SQUIRES: You're into January already?

MR. M. BABCOCK: Even if you proceed tonight, it's not going to get you--

MS. GUGLIELMI: How many meetings do you have in December?

MR. TORLEY: At this point, one.

MR. LUCIA: Even aside from that, once you are through here, even if it went through on an area variance, you still are going back to the Planning Board. You would not have a written decision from this Board until January.

MS. GUGLIELMI: That is okay at least we got everything out of the way and we can go ahead and our mortgages--

MR. FENWICK: You are taking for granted it's going to get passed. I don't have a problem with it. We cannot go on the basis you are going to be passed.

MR. J. BABCOCK: Don't worry about losing the property, it's been on the market a long time and you're the only people who have been able to buy it and the market is soft.

MR. FENWICK: How long has it been on the market? This goes into the use variance.

MR. J. BABCOCK: Speaking of present owners, I haven't seen their letter saying that they are allowing these people to come before us.

MR. FENWICK: Actually, you don't have a problem. You don't own the property. They have the problem. The owner of the property has the problem.

MS. GUGLIELMI: Mr. Bloom, they had the seller sign a statement. Did you get that packet that went to the Planning Board? It was a waiver.

MR. J. BABCOCK: We need a letter, co-application.

MS. GUGLIELMI: She did all that and we submitted it to the Planning Board.

MRS. BARNHARDT: We have the minutes.

MR. M. BABCOCK: It's not something that we can't get a copy of.

MR. LUCIA: It helps the Board to focus in if there's something that is there, it will give us a chance to discuss it.

MR. M. BABCOCK: That's a proxy in the Planning Board's files authorizing the Wind of the Willows to represent this.

MR. FENWICK: Okay, that's something we need.

MR. M. BABCOCK: One thing that is not here, Mr. Squires would have to get a proxy for him to represent you before the Board but that is not hard to do. Matter of fact, next time when you get a chance, just get her to sign a proxy for you. The only other thing before we leave tonight is the parking. If there is going to be a use variance, I'd like the Board to address the parking. If they are satisfied with the amounts as far as it's calculated the way it is now, under professional business--

MR. J. BABCOCK: Did the Planning Board review it?

MR. M. BABCOCK: Well, they did look at the preliminary.

MR. FENWICK: If you read the minutes of the Planning Board meeting, they are pro this situation, they are very much in favor of it, they are very much in favor of it.

MR. J. BABCOCK: As far as the parking, they are satisfied with the 21 spaces that are there?

MS. GUGLIELMI: Twenty-eight (28).

MR. M. BABCOCK: I really don't want to go on record saying what the Planning Board is in favor of.

MR. J. BABCOCK: They reviewed it and they sent it to us to look at it as part of their review?

MR. M. BABCOCK: Right, just so I can explain to you what I'm trying to say is the applicant before Mr.--on Mertes Lane, the Board wished that I use a different criteria than what was being used at the first application and I just want to make sure that the application that we are using now and the criteria is all the same.

MR. LUCIA: The point that Mike raises is relevant because since we are into an area of the ordinance that the Town Board hasn't considered parking on a fairly high traffic use like this may not be adequately defined in the ordinance because it's not something that the Town Board considered so I think it's the Board's prerogative whether you want to require the applicant to do a traffic study if they are having 64 to 74 children, that is a lot of daily trips and a lot of movement and whether or not since the ordinance did not ever define a day care center whether or not we need to consider parking as adequate or inadequate or subject to a variance on this application.

MR. TORLEY: For what it is worth, the Planning Board voiced no problem with the parking situation for what it is worth.

MR. TANNER: That is just preliminary review.

MR. M. BABCOCK: Only because the Planning Board typically Mark reviews the plan and the surveyors submit one to Mark. Mark reviews it and they get together and it's determined that there is a variance requirement on the plan. At that point in time, we still haven't really finished with the plan at all. We refer it to the Planning Board for referral to the Zoning Board of Appeals for those variances so I don't think the Planning Board has reviewed the plan to their fullest extent.

MR. TANNER: What you are saying they haven't addressed parking.

MR. M. BABCOCK: I don't want to go on record saying they have or have not right now. I think they have referred it to the Zoning Board for the variance that you see before you tonight and they will review the plan. But, if the Board is going to call this a use variance or if the applicant is going to apply for a use variance, is that the criteria that they want to use? I'd hate to see the applicant have to come back for another variance.

MR. FENWICK: Just out of curiosity, what they looked at here, the existing parking really now what he is saying is 28 spaces.

MS. GUGLIELMI: That is a proposed.

MR. FENWICK: Is that what I'm looking at, there's 21 that's here and 7 over here, would that meet the criteria for a professional business use for the building there is now?

MR. M. BABCOCK: It's one space for every 200 square feet in professional office. What they came up with is they said her surveyor said that there'd be a maximum staff of 18 plus volunteers which really doesn't have to much of a criteria and 1 space per 200 square feet of floor area comes up, that required 25 spaces. And he's going to provide 28.

MR. FENWICK: I don't have a problem with that. At least they are falling into something here and this as soon as we have this use situation, if it is in fact we are passed it would get back to the Planning Board and they are going to have to have final site plan approval anyway.

MR. M. BABCOCK: But the reason why I'm saying that question you, is that he--

MR. FENWICK: Yes, I see that.

MR. SQUIPES: If there is no apparent reason for a use variance as a professional business and if we meet the professional business requirements for parking, we shouldn't need a variance for parking.

MR. FINWICK: Right.

MR. TORLEY: I'd caution you as I skim this, it appears that the Planning Board is only going to have one meeting in December so you wouldn't have made it anyway.

MR. M. BABCOCK: What happens is that we are not looking for a use variance to put a professional business in a PI zone. We are looking for a use variance to put a day care center in a PI zone. That doesn't have any regulations for parking so that is why I wanted the Board to address that.

MR. SQUIPES: Then based on that, should we apply for a variance in parking so a decision can be made?

MR. FENWICK: I don't think so. I'd say that the parking on this is going to be at the mercy of the Planning Board. The Planning Board is going to say yes, you have enough spaces, no you don't have enough spaces since we are just giving you the use, this is my opinion, parking on my end as I look at this

drawing which if you are going to come before us, make sure this is the drawing you are bringing before us. Don't change it or anything else like that. If we are going to be looking at it, all the members of this Board want to be looking at this drawing. When you leave here, this is the drawing that you are going to go back to the Planning Board with. We have to have that straight line all the way across. We have to, we all have to be looking at the same item.

MR. SQUIRES: One exception to that in that we added the additional variance that was improperly laid out.

MR. FENWICK: That is correct, I just spoke, there is an additional front yard variance needed of 7 foot.

MR. SQUIRES: We'll probably revise the drawing in that area to reflect that.

MR. FENWICK: That is correct, we have that.

MR. TORLEY: I think you see the reason.

MR. FENWICK: I will entertain a motion to table this.

MR. NUGENT: I make a motion we table this until the next meeting, until he has the information to us.

MR. SQUIRES: Can that meeting be scheduled at this time or until I get you the data?

MRS. BARNHARDT: The information has to be here, right?

MR. FENWICK: Yes, definitely.

MRS. BARNHARDT: I can't schedule it until I have the information.

MR. LUCIA: Since this is a use variance, we are going to get into SEQRA. I assume you did a short form EAF for the Planning Board. We probably should now that there is a use variance application to be pending be added as an involved agency on the Planning Board's submission. Mike can get us a copy of the Planning Board's EAF.

MS. GUGLIELMI: We have an environmental assessment phase one completely done already.

MR. LUCIA: We just need to be added as an involved agency when that was handled at the Planning Board, they didn't envision you coming here for a use variance.

MR. FENWICK: I'm going to jump the gun a little bit ahead.

When it comes time for a public hearing, the county has, also has to be notified because you are within 500 feet of a county or State road which will be within 500 feet of the Route 9W.

MR. SQUIRES: That is within 500 feet.

MR. KONKOL: I will second that.

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. J. Babcock	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

MR. FENWICK: I'd like that a note be going to our Police Chief from me in reference to taking a look at the traffic report of this area.

MR. KONKOL: And stress that these are going to be used with minor children, possibly 60 to 70 and a staff.

MR. SQUIRES: If you do contact the police department I'd ask that we be contacted so that if there is any coordination needs to be done--

MR. M. BABCOCK: Sure, he can supply him with the plan, he can supply them with any information they need.

MR. FENWICK: Yes, thank you.

TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

DECEMBER 10, 1990

MEMBERS PRESENT: RICHARD FENWICK, CHAIRMAN
DAN KONKOL
LAWRENCE TORLEY
JACK BABCOCK
JACK FINNAGAN
JAMES NUGENT
TED TANNER

ALSO PRESENT: PAT BARNHART, SECRETARY
DANIEL LUCIA, ESQ., ZONING BOARD OF
APPEALS ATTORNEY
MICHAEL BABCOCK, BUILDING INSPECTOR

MR. FENWICK: I'd like to call the regular meeting
of the Town of New Windsor Zoning Board of Appeals
to order.

Since we just received the minutes for the last
meeting tonight, I am going to postpone a motion
to accept the minutes of the last meeting.

re'd
11/10/90

WIND IN THE WILLOWS - SECOND PRELIMINARY

MR. FENWICK: This is a second preliminary meeting request for day care center on Walsh Road in a PI zone.

Laura E. Ewall, Esq., from Drake, Sommers, Loeb, Tarshis & Catania came before the Board representing this proposal along with Calais Guglielmi.

MS. EWALL: My name is Laura Ewall from Drake, Sommers, Loeb, Tarshis & Catania and our firm represents Wind in the Willows and I'm here with Calais Guglielmi who is for Wind in the Willows. She might be able to also answer some of the particular questions that you may have. I know that she has been before you and was referred here from the Planning Board requesting area variance. I know your Board has voiced some concerns as to a day care center as a professional business in a planned industrial zone.

I think what we have here certainly we have a hole in the zoning ordinance which we don't have day care centers referred to specifically in any of the zoning but I think that makes it ripe for the Board's interpretation here in accordance with the town's policies. We know the Planning Board has seemed to interpret it as a professional business. We have what I think is more importantly here is a state policy which is set forth in the Social Services Law Section 390A. What that State policy provides is that it declares itself the legislature declaring that it's the policy of this State to encourage the construction of day care centers and the maintenance of day care centers and there are several court decisions which I can mention to you, one is called People vs. Bacon and the other is Unitarian Universalist Church of Central Nassau vs. Shorten (phonetic) and what those two decisions do is they interpret the State policy and there are zoning ordinances involved where there was some ambiguity as to how they should be interpreted and what the court said that given the State policy encouraging day care centers that where a Board can, they should interpret the zoning ordinance to permit the use, to permit the day care center as a permitted use. I can also give you references, site references if that can help you out.

So, what we see is that there really, there are two options to the Board here. One is the professional, to interpret it as a day care center as a professional

business which is allowed in planned industrial zone. There are people that will be working there who have bachelor degrees, there's a certified teacher who will be nurse practitioner, all the, they will all have some type of nursing background so what you might consider professionals and there will also be a pediatrician associated who will be on-call so where we talk about professionals, I think there's support for you to find that this is certainly professional business.

There's another option that hasn't been brought to you as to an office building with a business office. There are under your ordinance, under your ordinance, an office building with building offices is permitted so what you could say here certainly is that a day care center is a business office and that this is the business office in an office building. Again, we have, I have a case People vs. Holloran that says certainly a day care center is a business. So, what we ask for you to do is to interpret it certainly to interpret it and then we will look for area variances which is the original reason that--

MR. FENWICK: The application I have an application for a variance or a special permit under additional comments describing conditions or let's go to interpretation, describing in detail the proposal before the Board, see attached letter by Richard Drake also see attached letter by Richard Drake. Do we have that?

MS. EWALL: I don't have that, I think there was perhaps a miscommunication. I don't know if there has been a letter drafted yet. Certainly, I can draft a letter and send it on with some of the things that I just said and I know I don't know of a letter per se that goes with the application.

MR. LUCIA: The application also hits the use variance box but I don't know if that is your intention as an alternative remedy or how you want to present it.

MS. EWALL: I believe we are not really looking for a use variance, we'd urge that the Board see this as an interpretation question and again in accordance with the law in the cases that I have found and the State policy, I think the State policy is the strongest reason.

MR. LUCIA: If you get to the point of presenting interpretation obviously I'd like to see that in writing in advance. The other issue you might want

to consider if you look at Section 48-33A of our ordinance which is interpretation section page 48-78, I wonder how it is you're coming here. I'll give you a minute to look at that.

MS. EWALL: Originally she's coming here for an area variance.

MR. LUCIA: Right but looking at the interpretation language for--

MS. EWALL: I see on appeal from a court.

MR. LUCIA: Is there anything you're appealing to this Board?

MS. EWALL: No, not particularly because the Planning Board has interpreted it, they have discussed it in their minutes that they see this as a professional business and they didn't actually refer it to you for interpretation but I know your Board was concerned with it.

MR. LUCIA: I am not saying it is a barr but it's an issue you are probably going to have to get by if we don't have jurisdiction, we can't interpret it.

MS. EWALL: True but then again, we'd just be asking for the area variance solely because it's been interpreted.

MR. TORLEY: It's not been interpreted by this Board, the Zoning Board is the one that makes the interpretations.

MR. JACK BABCOCK: Number one, I don't know that they were going to be back on the agenda this evening. It wasn't on, is that correct?

MRS. BARNHARDT: Yes.

MR. JACK BABCOCK: Had I known, I would have been prepared to have the Fire Inspector here because I had this discussion with him over this piece of property and before we do anything, I think all these matters pertaining to health and safety or fire and safety has to be addressed before this Board can make any kind of a decision on whether it's a variance or it's an interpretation because I understand from the Fire Inspector's that there's a lot of unanswered questions here pertaining to the use of the basement by occupied space, how many stories the building is because until

that is determined, the uniform fire prevention and building code can't come into effect until they know or establish whether it's one-story, two-story or three-story building. All those things that pertain to the new uniform code and if so, are we changing the classification of this and if so, that is another aspect of the new building code. I think there is a lot of unanswered questions here which we told the young lady the last time when she was here and had we known that an attorney would have been here tonight, we would have requested that the Fire and Building Inspectors be here or the Fire Code Inspector be here because he has an awful lot of things for this building that at one time or another they are going to come out and I think in our judgment here before we can do anything, the health and safety issues have to be addressed.

MR. FENWICK: If one of the things that came up at the last meeting, there were some contradictions, I am trying to find them since we just received the minutes tonight, they had something to do with the amount of-- we were told one thing and looking at the map, it turned out to be something else, also two-story building and for most part, I am finding people are telling me that it's three-stories, looks like three-stories.

MR. JACK BABCOCK: If you count the basement, that could add another story because it's opened on three sides.

MS. EWALL: For one thing, we are going for a site plan approval before the Planning Board so a lot of these concerns have to be addressed and certainly will be addressed but also as to fire prevention, the State is also involved in licensing them and they are inspected for fire prevention reasons and a report is issued and they have to conform. There are certain requirements they have to meet to get it up to code.

MR. JACK BABCOCK: State is one thing but when local municipality is more stringent, you have to go to the more stringent.

MS. EWALL: The town uses uniform fire prevention.

MR. JACK BABCOCK: They use that and we also have our own particularly on the areas where we are talking about.

MS. EWALL: I am sure this does get addressed at the site plan level.

MR. JACK BABCOCK: You're here in front of this Board so that is what I am saying before we can really address your request, we have to know what it is pertaining to, the most important thing is health and safety of those children. One of the questions came up how many children and we were told so many children by this young lady here and on the drawing, it had another number, if I am not mistaken and the amount of parking places contradicted what was on the site plan.

MS. GUGLIELMI: The parking has to do with the square footage, not the amount of children.

MR. KONKOL: Seventy-five (75) children, 78 here.

MR. JACK BABCOCK: Now the Fire Inspector tells me he was told there was less amount of children because he asked me how many children was on that plan and I told him so you see there's a lot of--

MR. KONKOL: I think the big thing here the fact that you were put on the agenda tonight, we had specifically asked for a lot more information, traffic studies and fire, had you come in prepared with that, that would be fine. We are just hashing the same thing over.

MS. EWALL: We are at the preliminary level certainly a lot of these things will come out at a public hearing and there is a lot of information additionally that you need but we are looking for some guidance at this point as to whether the interpretation--

MR. KONKOL: Forgetting about the interpretation. Before this Board can grant a variance, it's pertaining primarily to public safety and health and welfare, that is the first thing we can in granting a variance and we have asked for specific information which we are not seeing here.

MS. GUGLIELMI: The police report was not our responsibility to get, that was not our, it was not given to us as a task to obtain that. It went directly from your office.

MR. FENWICK: It's been sent to the Police Chief. I haven't gotten an answer.

MS. GUGLIELMI: We can't bring that to you because that will come from the police.

MR. FENWICK: When we see that, we will talk. I didn't

know you were going to be on the meeting. Everybody saw it as an add-on to our agenda. And I was really surprised and now I have got the minutes in front of me of which I haven't read yet because we just received those this evening. Everybody on this Board is concerned about this.

MS. EWALL: If I simply read through the minutes, am I going to get all the concerns? Are there additional concerns?

MR. JACK BABCOCK: I think most importantly, somebody better square it away whether the attorney for the group here should square it away with the Building Inspector and the Fire Inspector whether it's a two-story building, is it a one-story building or three-story building has to be determined. I understand the onus is placed upon the applicant to tell the Building Inspector or Fire Inspector whether or not it's a two-story building and they will make a determination with the Town Engineer. So, there's a lot more here before they even come to us.

MR. KONKOL: We are supposed to have a letter from the attorney which we don't have with no comments whatsoever, we just have see letter by Richard Drake. We are wasting enough time on this tonight.

MR. LUCIA: The application was done prematurely because normally, we can through several preliminary meetings or one more preliminary meeting, depending on the application and once you are set up for the public hearing, then the applications in so the application is probably premature. Dick's letter should be supplied. If you look through the minutes of the last meeting, you'll have a few plus the minutes of this meeting, you'll get the concerns of the Board. The only new thing I'd add I'd like to see something whether we really have jurisdiction under the interpretation question before we bring the issue here at all.

MS. GUGLIELMI: On these minutes here on page 17 when you brought up the issue about the fire, wait a minute, he said specifically the last minutes that we were here, the issue of fire was brought up, okay, and he specifically states that that is all he needs to know, that is fine.

MS. EWALL: There's a reference in there as to the people that were looking at the fire and safety concerns and they are referenced to the different people that are looking into it.

MR. FENWICK: That was an answer to Mr. Rogers is looking at this.

MS. EWALL: I recall reading it.

MR. FENWICK: Page 16.

MS. EWALL: There was a question about fire prevention, I want to know what you are going to do to alter it, to bring it up to uniform fire prevention and building code. We have a whole packet on what we have to do and you're aware most of them are still reviewing, we have most of them, we have a report from the State Fire Inspector, Social Services who uses the code, he's outlined what he wants us to do, it's been reviewed by Mr. Babcock and Mr. Hotaling and Mr. Rogers and then it says we need to say no more, I feel comfortable.

MR. JACK BABCOCK: What are we saying?

MR. FENWICK: It's been reviewed--

MS. EWALL: You said you felt comfortable with the answer that was given to you.

MR. JACK BABCOCK: That is not correct. I said if Mr. Rogers and his department was looking at it, we would feel comfortable because I know he'd do a thorough job. I did not say that I feel comfortable and I accepted that.

MS. EWALL: No, I don't mean to imply that, I mean to simply say that it was being reviewed.

MR. KONKOL: The whole synopsis, the application was to premature and your coming in unprepared. This Board is not prepared to act on anything.

MS. EWALL: We are at the preliminary meeting, I am not asking you to act.

MR. KONKOL: We have asked for specifics.

MS. EWALL: You did not ask for anything more than fire prevention. I've read through them and there's not-- can I ask what in particular you'd like as to fire prevention, now the Board knows that there's a review that's being reviewed.

MR. KONKOL: I'd like to see the results of the report.

MR. FENWICK: Like to see the letter from Mr. Drake. I

don't know what his input on this thing is. You're telling us it isn't even cut yet.

MR. TORLEY: What was the number of students listed on the map?

MR. FENWICK: Seventy-eight (78).

MR. TORLEY: In our minutes shows that there's between 64 and 74 children.

MS. GUGLIELMI: Licensed for 78 and we'd actually have between 64 and 74.

MR. FENWICK: I am going to let our attorney repeat to you again about the interpretation situation, that is where it is lying right now as far as I'm concerned. And I would say right now not to interrupt you but my concern is not concept, my concern is the location of what it is that is my concern and the traffic that is on that and we don't have a traffic report now and I have been down that hill, that's horrendous in there and I'd hate to see it 4:30 at night when people are coming to pick up the kids. You can't even pick kids up there now without that even being there. You can't get up the hill at 4:30 at night.

MS. GUGLIELMI: How are you going to know they are all going to be coming up the hill at the same time? There's John Street, the street behind it.

MS. EWALL: You may be able to address those questions. We don't know how traffic is. I can't guess right now how traffic is going to happen but I would gather with any other things, you often have problems with traffic and your design was to alleviate traffic problems.

MR. LUCIA: In order to do that, we'd need a traffic study. Ms. Guglielmi's point is well taken, we really don't know which way that traffic will come until you bring a traffic study showing what the existing traffic patterns are, how your use of the property is going to impact those existing traffic patterns and if any mitigating measures are necessary.

MS. GUGLIELMI: I have no idea which way the patterns are going to go when they leave.

MS. EWALL: Is this for the purpose of an area variance?

MR. LUCIA: The difficulty I have is since you are looking for an interpretation on a use that presumably

the Town Board has never ever considered in this zone. What parking standards are we to apply if it is not a use that the Town Board has ever considered. Now, if they had considered a day care center use, they might have given us some guidance on what sort of traffic and what sort of traffic requirements are necessary there. So, if you're bringing to us the first impression before we say yeah, go ahead, just use your requirements for professional office, we probably should in good consciousness have some idea of the traffic impacts and parking requirements.

MS. EWALL: What I submit to you, they don't define professional offices in any particular business commercial here and you can say it is all a case of first impression because now you show a repair business is not interpreted, is not defined, doctor's office is not defined but if we can see it as professional business, you use the professional business criteria whatever criteria are in there for professional business you use that. Certainly, most I mean you can't find the zoning ordinances that are going to state every particular conceivable use because of course there will also be ones added in the future that you couldn't have thought of at the time.

MR. LUCIA: Yes, your point is well taken. My concern is this use seems to have a volume for an excess of what I believe this is my opinion the Town Board had in mind as a professional business, it really does give rise to traffic and parking problems that probably weren't anticipated.

MS. EWALL: If you talk about an office building and businesses offices, certainly it wouldn't, I don't think we can doubt that it's a business office because clearly under the law, it's a business. If you have an office building with a number of offices, I don't we can say and if they are all day care offices, that there would be less impact if that office building--

MR. TANNER: There would be because it's spread out over a longer period of time. Whenever parents pick up children at a specific time for instances when they get off work at 4:30, you are going to have a maximum impact at one time rather than spread out over a whole day, that makes a big difference.

MS. EWALL: When the 5 o'clock whistle blows at an office building, I'm sure you see a big rush out that door.

MR. TANNER: Nowhere near when you have 78 people.

MR. FENWICK: Is this some kind of a deal but why here there is perfectly good buildings in New Windsor and one not to far from where you are, there's one up from the road from you that was, it was already a day care center.

MR. KONKOL: O'Neil School on 94.

MS. EWALL: The question is--

MR. KONKOL: Under Section 4833, the powers and duties of this Board and if you go under B variance paragraph C that the granting of the variance under such conditions as said the Board may deem necessary or desireable to apply thereto will be in harmony with the general purpose and intent of this Local Law will not represent a radical departure therefrom, will not be injurious of the neighborhood, will not change the character and will not otherwise be detrimental to the public welfare. We cannot grant the variance based on that without proper--

MR. TORLEY: I don't think anybody on the Board is opposed to the idea of a day care center. The question is whether this particular place and structure was appropriate and that was one question. Second question was the whole idea of the interpretation, whether interpreting a day care center as a professional business under the meaning of your bulk tables was so far away from the apparent intent as we have understood it from the Town Board that perhaps the Town Board should revise the code beyond our jurisdiction for that. So, I think as other members have said, our primary concern we are worried about the health and safety of the kids more than anything else.

MS. GUGLIELMI: You think the building is no good?

MR. TORLEY: I don't know.

MS. GUGLIELMI: State department is licensed, that's all they do 8 hours a day five days a week. You do not consider them a professional organization to say whether or not the building is safe?

MR. TORLEY: We have not seen their report.

MS. GUGLIELMI: Mr. Babcock do you have the keys to the office?

MR. MIKE BABCOCK: Yes.

MS. GUGLIELMI: Can you get the report?

MR. MIKE BABCOCK: I don't think they are going to read the report tonight. We have, as the Building Inspector and the Fire Inspector, we have not approved this project. We have--

MR. JACK BABCOCK: Case closed.

MR. MIKE BABCOCK: They have an engineer working on the project. He submitted a code compliance outline for this building. I gave that back to him. I don't know what date, several weeks ago, with some items of concern. He has not come back to me and referenced those items in the code book that he has to address as of today.

MS. GUGLIELMI: You received from me a report from the State Fire & Safety Inspector?

MR. MIKE BABCOCK: That is not what I go by.

MS. GUGLIELMI: He said we haven't provided anything from a professional source stating whether or not this building is safe outside the Town of New Windsor. That is what this gentleman was inquiring about.

MR. MIKE BABCOCK: I am not going to base my permit on that. My permit is going to be based on New York State Certified Engineer or Architect.

MR. FENWICK: There's two professionals we don't have answers from, Mr. Drake who's supposed to have written a letter and an answer back from your engineer on the concerns.

MR. LUCIA: I think what the Board is trying to tell you is they obviously have concerns with this project that can be addressed by various professional inputs. For your own purposes in presenting it, the more you can come in here with the better off you are. I am not sure they are going to put you to the expense of a traffic study but at some point, you're probably going to have to do it here or at the Planning Board, the earlier you get the stuff in, the better the Board is going to be in a position to address some of the questions that they are raising. If you come back with a proposal from your engineer or architect, that addresses Mike Babcock's concerns, this Board is going to feel far more comfortable that you're addressing issues raised by the local Building Inspector.

**RETAKE
OF
PREVIOUS
DOCUMENT**

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MS. GUGLIELMI: Isn't that an issue for a C.O.

MR. LUCIA: We are not saying whether or not you get a C.O. but it addresses health and safety issues that are this Board's concern so I think the earlier suggestion was take a look at the minutes of this meeting and the prior one, I think the Board has probably raised most of the issues that are going to come up at a public hearing. Take a look at that section on jurisdiction for interpretation, if we can handle it, I'd be happy to.

MR. TORLEY: I'd appreciate it if we are going to be asking to make judgments based on reports we get the report sometime in advance to the meeting because as we walk in cold and find this on our agenda--

MR. LUCIA: The best way to do it and so the applicant understands this appeared on our revised agenda today. This Board has had an agenda which this didn't appear to it came at the 11th hour so until tonight, most of the Board members didn't know you were going to be here. You probably should come back for another preliminary. At that point, we'll have Drake's letter and then come back with as many reports as you can from your professionals and if they raise any issues, we can handle them then and set you up for a public hearing.

MS. GUGLIELMI: Can you just state from one person all of the major things that you would like us to come back with so that there's no question?

MR. LUCIA: I think you have the building and fire code issues that need to be addressed. Have your engineer or architect answer Mike Babcock, I think we probably do need a report from the Fire Department. I assume that has not been done yet from Bobby Rogers.

MR. MIKE BABCOCK: No, it hasn't.

MR. LUCIA: You need local Fire Department also to comment on the facility.

MR. FENWICK: What I'd also like from you, Mike, is what you said you had questions you had given to their engineer. We want to know what those questions are and we don't want them coming back in here with answers and they may not be answering your questions or answering your questions to your satisfaction. Also, we are going to need, well, we have just addressed the letter from Mr. Drake.

MR. LUCIA: We need a response from the Police Department. They are supposed to comment on traffic.

MR. FENWICK: I have requested it. I don't know that they are going to do it. I took that upon myself. We did write the letter. I signed the letter, the letter was right after our meeting. I should have an answer some way or another from the Chief.

MR. TORLEY: The other thing I'd appreciate is some of the State rulings regarding their interpretations of this that would be at least a help to our attorney to have the citations.

MR. LUCIA: Also, do we want them to submit a traffic study at this point or--

MR. KONKOL: I think it's very important.

MR. LUCIA: Okay.

MR. TORLEY: All of us feel that the overriding concern is the health and safety more than any other problem.

MR. FENWICK: We are beating a dead horse. What is the pleasure of the Board? A motion to table?

MR. FINNEGAN: Are we going to be making an interpretation as to whether or not it's a professional office or not?

MR. LUCIA: I assume what the applicant is looking for is an interpretation of day care center, is that a professional business under our code.

MS. EWALL: Or office building. I think it can fit under office building and it may make everybody feel more comfortable and I think it fits in.

MR. LUCIA: And still require an area variance. Before we even get to that, there's an issue as to whether or not we have jurisdiction on this interpretation but counsel and I can talk this over in advance.

MR. FENWICK: Do we have a motion to table?

MR. TORLEY: I so move.

MR. KONKOL: I will second it.

MR. TORLEY: Is this for the next meeting?

MR. LUCIA: It's going to depend on how quickly you can get your input together. You know rather than having you come back with half of it, if you can get all the stuff set up by the next meeting, call back and we'll put you on but I think it will depend on how quickly you can get the professionals to comment.

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. J. Babcock	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

MR. JACK BABCOCK: If they don't have all this information by the next preliminary meeting, I don't even want to see it in front of our Board. I don't want to go through each preliminary meeting deciding what they do and do not need. If the answers aren't here from the Fire and Building Inspector's office to satisfy this Board, they shouldn't even be back here until they do.

MR. LUCIA: January 14th, 1991 is the next meeting.

MS. EWALL: Thank you, good night.

MR. LUCIA: You should not assume you are on the agenda.

MS. GUGLIELMI: I understand.

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

JANUARY 14, 1991

BY MR. FENWICK: I would like to call the Zoning Board of Appeals, January 14, 1991, meeting to order. This evening we are without our secretary and also our recording secretary, so we'll take the motion and it will be verbal. At this time I have the roll call. Okay.

BY MR. TORLEY: Here.

BY MR. FENWICK: Mr. Finnegan.

BY MR. FINNEGAN: Here.

BY MR. FENWICK: Mr. Babcock.

BY MR. BABCOCK: Here.

BY MR. FENWICK: Mr. Konkol.

BY MR. KONKOL: Here.

BY MR. FENWICK: Mr. Tanner.

BY MR. TANNER: Here.

BY MR. FENWICK: Mr. Nugent.

BY MR. NUGENT: Here.

ALSO PRESENT: Daniel Lucia, Esq., Zoning Board Attorney and Michael Babcock, Building Inspector.

BY MR. FENWICK: If there's a question by the member of the Board what Mr. Babcock is still on the Board - I know he turned in his resignation. I went to the Supervisor to hold it off for one more month. His resignation will be effective the end of this month and not until that time. We know that there is something very important coming up and I definitely think we needed Mr. Babcock's input on this matter. So we all know what we're talking about here, so in order to go on -- motion to accept the minutes of the November 26th and the

rec. l
2/21/91

WIND IN THE WILLOWS:

BY MR. FENWICK: The hot item and I think we've got all the reports in now, Mrs. Guglielmi, she thought she was on this for a preliminary hearing. She had told Pat I'm all locked up and I I'm coming in on the 14th and all that kind of stuff. I said not without the reports. And as of Wednesday afternoon I did not have all the reports in my hand that you have here. The fire report got in my hands Thursday, I spoke to Pat and we agreed, that no, she does not come on for preliminary hearing without all the reports that we figured were necessary. I had Pat speak to Mike to see if everything was in at the time and we still didn't have everything. The one letter from Loeb was delivered across the street to Tad Seaman's office and it got to Pat I think Wednesday or Tuesday afternoon or something like that. To get all of this out in the mail and over to all you people and still have it written onto the preliminary meetings I think was against everything we had said before. We wanted it all in our hands, we wanted it ahead of time and the only way we'd be able to do that I had thought that if I had everything in my hands as of Wednesday afternoon I was going to tell Pat we'll have the meeting start at seven o'clock and just to get this thing rolling. We didn't have it. I didn't have the fire report in my hands or anything else on Wednesday afternoon and Pat and I talked it over and with her suggestion and I went along with it, that we just put them off and we did. They're not happy about it. I think, please read these reports. I think, do we have everything that you needed Mike?

BY MR. M. BABCOCK: No.

BY MR. FENWICK: There's something about an engineer's report or something that you had a list of questions that you had asked their engineer or architect or whatever. Did you get that back?

BY MR. M. BABCOCK: No I haven't.

BY MR. KONKOL: We're asking for everything pertaining to this.

BY MR. TORLEY: This is going to need interpretation?

BY MR. FENWICK: I'm going to tell you something right now. Jack, read this. Read it. It is really important that you read it. And if you're going to concentrate on anyone thing concentrate on the fire.

(A discussion was held off the record)

Being that there was no further business to come before the Board, a motion was made to adjourn the meeting by Mr. Nugent and seconded by Mr. Babcock and approved by the Board.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frances Sullivan".

Frances Sullivan
Stenographer

TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

JANUARY 28, 1991

MEMBERS PRESENT: RICHARD FENWICK, CHAIRMAN
LAURENCE TOPLEY
DAN KONKOL
TED TANNER
JACK FINNEGAN
JACK BABCOCK
JAMES NUGENT

ALSO PRESENT: DANIEL LUCIA, ESQ., ZBA ATTORNEY
PAT BARNHART, SECRETARY
MICHAEL BABCOCK, BUILDING INSPECTOR
MARK EDSALL, P.E., ZBA ENGINEER

MR. FENWICK: I'd like to call the regular meeting of the Town of New Windsor Zoning Board of Appeals to order. We will postpone the adoption of the minutes since we don't have them. There will be some discussion after the meeting about the minutes.

WIND IN THE WILLOW - SECOND PRELIMINARY

Richard Drake, Esq. came before the Board representing this proposal along with William Squires.

MR. FENWICK: This is a request for area variances for day care center on Walsh Road in a PI zone.

*rec'd
2/21/91*

MR. DRAKE: I am going to make the presentation on behalf of the applicant. I hope everyone has received and had an opportunity to review the application and materials that we submitted. I don't intend at this point to go in with the Board in any detail what is in this report and our legal position. We'd really just kind of like to discuss in general principles with the Board. Having read the minutes of the last Board meeting, we know the concerns that the Board has about the application and the questions, whether it is a Zoning Board of Appeals area variance, whether it's a use variance or whether it's both. I recognize the concerns the Board has and as you see for the application before you, we are asking the Board to consider this as a straight area variance.

In order to come off of some of the problems my applicant finds itself in a sort of in the horns of a dilemma having appeared before the Planning Board and the Planning Board was very comfortable with the designation of this use as a professional business but the site plan required certain area variances which required the applicant to come before the Board. All of the issues which were raised by the Board are obviously very legitimate and this is the Appeal Court in the town. I would like to suggest to the Board that one possible way of handling this without setting a precedent would be not to reach the issue. Traditionally, the Court of Appeals only treats issues which are asked of them to be heard and do nothing beyond the scope of the appeal. This Board I believe based upon the materials that we have submitted based upon the preliminary indications that the Planning Board has made can address this as an area variance. It will not set a precedent because this Board will not have considered any of the issues which were raised in the prior meeting. That is to say the variance that would be granted would be simply an area variance. The Planning Board would then perform its normal function of having the site plan review. At that time, it would consider a lot of the collateral issues which I think worry this Board and I think the application would then go forward. There would be no precedent set in the Town of New Windsor because the issue would never have been handled by this Board and this Board asks the ultimate interpretation of the zoning law.

Frankly, I have been in this a long time and in my opinion, we cannot meet the test for use variance. There's nothing about this property which would qualify it as a, for a use variance. We would never in my opinion be able to substantiate the test that the State law requires. It is not to say that this Board

could not grant a use variance because as you all know, most use variances fall short of the test but if there is no public opposition if the use is desirable, if the community wants it, if it presents a rateable, many times use variances are granted in which the applicant does not meet the test but I'd be less than candid with this Board if I didn't say I don't think we can meet the test here. So, that we really need the Board to take a narrow interpretation of the application and look at it as an area variance.

We have given, I think very substantial arguments citing the State law, the public policy of the State that day-care centers are a desirable use in this public policy of the State to promote them. It appears that the Planning Board thought it was a good use for the property. And they were not troubled and I would like to ask this Board to consider this application as an area variance.

MR. FENWICK: Let me ask you this, Mr. Drake, do you have the fire report from the fire, Town Fire Inspector?

MR. DRAKE: I don't know.

MR. TORLEY: The one dated 30 October, '90.

MR. FENWICK: This has come into our hands and I know you wished to be on the agenda the last time we didn't at that time we didn't have everything we requested from you in our hands in time enough to be put on the agenda. Since then, and probably of that afternoon, maybe the Thursday before the last meeting, this came into our hands at the last meeting. Everyone is given a copy of everything that you have presented to us. We have at this time and one of the things in here is public welfare. We have the interest of course it's to the Town Planning Board from the Town Fire Inspector dated 30 October, 1990. Subject is Wind in the Willows, Incorporated Site Plan. They refer to Planning Board Number PB-90-46 dated 10 October, 1990, Fire Prevention Number FPS-90-097.

"...A review of the above referenced subject site plan was conducted on 30 October, 1990.

The concept of this site plan is acceptable, however, it is the opinion of this writer that this building is a three (3) story structure of type 5b construction. Under Title 9 NYCrr, occupancy groups C6.1 and C6.2 are not permitted to occupy a three (3)

story, type 5b structure.

This site plan is rejected..."

I don't know how we can proceed on this. Everything else becomes moot at this point.

MR. SQUIRES: I have a disagreement with the statement that it's a three story building. I think the fact that this might have been presented, I don't know whether they presented that to you or not, Mike, the fact that the building is partially in the ground, the rear of the building is fully exposed, front of the building is totally in the ground with a transition of topo along the side. Taking an average height and using the requirements of the New York State Rules and Regulations, I found it be within the constraints of a two-story building.

MR. FENWICK: I am not going to speak for the Members of this Board. I don't see how I can overrule what the Town Fire Inspector has said. I don't in other words if it would seem to me if you have an argument, you have an argument with him. It says this site plan is rejected. Every other, it just doesn't apply, I don't know what we can act on. We are going to say if you are granted the variance, we'd be overriding what the Fire Inspector has said right here.

MR. DRAKE: That's not correct. You would not be overriding anybody. If you were to grant this variance all that does is permits the applicant to go back before the Planning Board for site plan review. If the site plan review is not going to be successful, the Planning Board is going to turn it down. This Board is not being, we are not asking anyone here for a site plan review tonight.

MR. FENWICK: We are looking at item right here where it said will not be otherwise detrimental to the public welfare when we grant a variance that is one of the things we are looking at, forgetting the site plan or whatever. We have this letter in front of us.

MR. DRAKE: Okay, but I think that the jurisdiction and the function of a Zoning Board is to make sure that the variance, if it's granted, meets and conforms with the overall purpose with the zoning as adopted by the Town Board. That it doesn't violate public policy of the town. It is not a site plan that we are asking for or talking about. And this is really a question that has

to be thrashed out between the Planning Board and the applicant. It may be true that if this man is correct, we are obviously not going to get our approval. That is not what we are asking for here and that is not--you are not being asked to approve anything other than a variance, an area variance. You are not condoning the site plan. You are not lending your support to the site plan. You are merely being asked to vary the density and bulk requirement of the town zoning ordinance.

MR. NUGENT: We don't act on site plans, we are acting on a variance, right?

MR. TORLEY: There's something else I am afraid I must disagree with you, with your statements.

MR. FENWICK: That's a public welfare, everything we look at is that.

MR. TORLEY: I must disagree with your statement that we need not make an interpretation. I think we must where this is a private business or not, whether this is a private business or not and I find it very difficult to say that a day-care center though they are desperately needed should be interpreted as a private business being the best and most closely--

MR. DRAKE: Professional business.

MR. TORLEY: Sorry, as being the closest approximation to what is in our zoning code. You are going to convince me that your activity should be interpreted as a professional business rather than a private school which is listed in our zoning code in several areas and by your statement to me, you're saying this is a school. When you have a certified kindergarten program, that is a school.

MR. DRAKE: Well--

MR. FENWICK: You're entitled to a public hearing and if you want to go to a public hearing, I won't prevent you. And if someone on this Board makes a motion to have a public hearing--

MR. DRAKE: I don't want my client to go to a public hearing if the Board is not at least of the opinion that the area variance is what is required. If first of all we can't even get to this Board on interpretation because no one's asked us to give an interpretation--if the Planning Board--we'd have to go back to the Planning Board, ask them to turn us down, send us back us back

here for an interpretation. We then come back here and ask for an interpretation. We can't walk in here and say give us an interpretation. It creates a serious problem for my clients. The delays are costly. We have a contract purchaser who is getting impatient with us and rightfully so.

MR. TORLEY: You can't ask us if you say we should ignore what you are going to do and just give you an area variance because--

MR. DRAKE: That is the Planning Board's job to make a determination.

MR. TORLEY: No because from what you have described, the activities that you have described, the activities that you have described what you plan to use the building for is to me is not something that meets under the code.

MR. FENWICK: I asked you to read Mr. Drake's letter and check on the validity of it, what he had to say. Did you do that?

MR. LUCIA: I have done that. Dick and I spoke last week. What he's laid out there is a good presentation on behalf of his client and I have no argument with it but the issues still faces this Board if you feel that an interpretation and/or a use variance is necessary, we do not now have a proper basis upon which to make an interpretation so I suppose the proper avenue of resolving that is to remand the matter to the Planning Board and make them aware when the application came in although it was only on the area variance grounds, we felt there was an issue with regards to interpretation and we'd like them to refer it to us for interpretation, specifically. We have no power in and of ourselves to interpret this unless it's brought to us by some other agency or Board of the town.

MR. TORLEY: We have to send the applicant back even though we know he's coming back for this?

MR. LUCIA: Exactly. The applicant has an absolute right. He was referred to this Board for an area variance. If he chooses only to pursue the area variance, we must handle the application and give him a public hearing on that issue but that may not be a complete issue to the problems but it seems to be self defeating to keep it on a piecemeal basis. It has not met the jurisdiction requirements to come to this Board for an interpretation so we'd have to

remand it back to the Planning Board.

MR. DRAKE: That's the dilemma that my client finds itself on is being bounced between two Boards. That is why I pointed out to the Board in the beginning as I read the minutes of the last meeting, struck me that the Board was genuinely concerned about setting a precedent by making an interpretation that this was, if it was granted it would therefore be permitted in other parts of the town. That is why I suggested to the Board you don't have to get to that issue because if you accept the Planning Board's decision that they're comfortable and I take it there was a unanimous decision by the Board that they were comfortable that this is a professional business, you're not setting a precedent. If it ever came up again, you'd be totally free to take any position you want to. That was the main reason that I made that presentation in the beginning.

MR. TORLEY: You're asking us to ignore plain data that we have in front of us.

MR. DRAKE: I am only asking you to consider what the Planning Board sent you, i.e. an area variance.

MR. LUCIA: It obviously is the issue with Bobby Rogers' report if we are going to remand it to the Planning Board since there appears to be a clear health and safety issue, I'd say we have this report from the planning inspector maybe you better handle this before you send it back here for anything because that's something that is more tied up with the site plan and at some point, you have to get by that issue.

MR. DRAKE: But Dan, we have a chicken and the egg. If we go back to the Planning Board, they are going to say why should we go through site plan review supposing the Zoning Board of Appeals turns you down on the area variance, the conditional approval that we have to have to meet the substantive issues that you're raising or to get by this Board.

MR. LUCIA: I think the problem is since it's a health and safety issue, the danger is you come here for whatever application you make to this Board and they say contingent upon your getting any decision contingent upon your establishing a two-story building.

MR. DRAKE: This presents a new issue that we have to deal with as to whether even if you said I accept your interpretation we're content to go with the area

variance, we still have to resolve this issue before we go anywheres but my problem is that if we go back to the Planning Board and say the Zoning Board didn't accept your initial preliminary interpretation, what are they going to do in terms of and what is their reaction going to be in terms of they have to make that preliminary determination on every single application that comes before them. And this is a matter of being challenged as to whether or not they are correct by a fellow Board in the same town. That puts the applicant in a very precarious position. Every use in every zone is generic so there has to be some interpretation. You cannot itemize every single use in the world and put it in your zoning ordinance. That's why it's written this way, that's why there's a Zoning Board.

MR. KONKOL: Even if we forget about the interpretation, the fact that it's somewhat ambiguous as to whether professional organization or a school which it's being referred to, compared to the Waldorf School, the biggest thing is public safety. We have a fire report cut and dry, it's rejected. We haven't even addressed the safety of the 73 kids that are going to be in there and their parents bringing them and the traffic conditions. We do have a traffic study. It's a very hazardous place. It doesn't belong there. I mean first of all, if it's a school, it doesn't belong in a PI zone and there are zones in the town, commercial, neighborhood commercial, that's where the schools belong, not in a PI zone. So forgetting about the fact that you're only looking for an area variance, it doesn't qualify and somewhere along the line, it's going to surface. You can go to the Planning Board, Fire Inspector and say you're going to fix it up but you are going to be a long time going down the line there.

MR. DRAKE: But that's the really the--if this is in the wrong zone, if the traffic is bad, if the parking--

MR. KONKOL: This Board is concerned with health, safety and welfare and we have it right there in black and white, the Fire Inspector rejected it. As far as I am concerned, we are beating a dead horse to death.

MR. DRAKE: This is the first time I have seen this.

MR. SQUIRES: I think he's rejecting it on erroneous information.

MR. TORLEY: The applicant's right that although health and safety by our regulations have got to be the primary concern for all of us that the actual site plan

details belong in the Planning Board. I think we have all seen that from that rejection from the Fire Inspector that it would have to be repaired before anything could happen but I am just trying to find some way that we can come to a resolution of the issue without ping ponging applicants between Boards.

MR. FENWICK: I'll take the Board if somebody wants to set-up a motion for a public hearing, I'll take the motion on what their application is.

MR. NUGENT: On an area variance.

MR. FENWICK: Just exactly what we are looking at here.

MR. TORLEY: If you set it up for a public hearing, you're asking us to ignore what we see.

MR. LUCIA: If we don't resolve it, we don't want to grant the applicant his area variance assuming the Board is in favor of them subject to establishing interpretation issue. That is why we have preliminaries, let's resolve it now before we make that motion.

MR. DRAKE: We can't accept that.

MR. LUCIA: I understand. I don't think you want to make the motion. Let's hash out the interpretation issue whether or not you feel this is something you feel to send back to the Planning Board to have properly referred here or maybe you accept Mr. Drake's analysis as laid out in his memorandum that maybe this is not something we want to pass on.

MR. TANNER: I'd hate to see it have to go back to the Planning Board but I don't see any other way around it. We have to cover whether this is a professional business or whether it's a school and it's not the Planning Board's jurisdiction to say yes, we think it's this or we think it's that. That's really the job of this Board to do and I think you have to go back to them and have them refer it to us.

MR. DRAKE: Well, I have been involved with Board's for a long time. Actually, this Board interprets the zoning ordinance when it's requested to do so. The Planning Board makes that type of preliminary interpretation on every single site plan that comes before them. They have to, they have to determine if it's in the correct zone, if it's correct use, if it's not specifically mentioned and your ordinance tends to be very specific. If it's not specifically mentioned,

they have to satisfy themselves that it's within the generic term and in this case they did.

MR. TORLEY: The exceeded, I disagree with that.

MR. DRAKE: You disagree, what you're saying the Planning Board was erroneous in doing that, you're not disagreeing on what I said?

MR. TORLEY: Correct.

MR. DRAKE: You're saying the Planning Board made a mistake?

MR. TORLEY: They were in error.

MR. DRAKE: That's the same thing but all I am saying is that it puts the applicant in a very funny position. To go in and get a unanimous decision by the Planning Board and to come to the Zoning Board and be told that the Planning Board was wrong.

MR. TORLEY: May I ask our lawyer one thing? Dan, is it an acceptable alternative to the delays of going back to the Planning Board, having them rescheduled for a hearing and come back again. Can the Building Inspector site rejection on that grounds without their having to go back to the Planning Board?

MR. LUCIA: We can take an interpretation under 4632A, a request of an official Board or agency. Mike is an official, I suppose he could request an interpretation, is he so chooses.

MR. DRAKE: But this is a site plan, right, and the preliminary jurisdiction is with the Planning Board, not with the Building Inspector.

MR. M. BABCOCK: I refer building permits as far as building permits and the building permit application, the Planning Board must refer site plan.

MR. TORLEY: What I'm attempting to do is see if we can expedite the process without having to ping pong you back and forth between the Boards but I guess we are stuck.

MR. J. BABCOCK: Mr. Drake, why in this building, why does your client, why are they so strong about putting that type of operation in this building when there's so many--I was very boisterous at the last hearing over health and safety issues because I think that is my

whole life as volunteer fireman, okay, and my concern with it, the amount of people, children and cars and we have studies, we have the Fire Inspector who's against it. We have no real interpretation of the amount of stories, it's one, two or three. I know the building, I have been there on a fire. I know the problems we had with that particular building. There's buildings vacant all over town. There's one on 94 which we told the young lady there at the first preliminary hearing is vacant, all set-up for that type of operation. Why this building? Why are they so strong against, about putting it in this location when they know that all the agencies here have a problem with it.

MR. DRAKE: Well, I don't think that they knew that when they signed the contract.

MR. J. BABCOCK: She's very well versed on what's required, I beg your pardon. She's very well versed. I sat with Mr. Rogers and he explained to me everything that he sent some architects, I forget the fella's name, he was supposed to give him information back, they didn't get it back. He said, she said, they said, we get back here the same thing, we didn't have enough information. Now we're here again tonight and the same thing like Dan said, we are beating a dead horse to death. You say it's not our jurisdiction, health and safety, where's the driveways going, where's this going, how many stories building. I think it's in order for me to vote on an area variance. I have to be clear in my mind and vote if I vote for an area variance, if this goes through and they do have a day-care center in my heart I know I voted in the right way that nobody is going to get hurt in case of a fire and an emergency in this building.

MR. DRAKE: The only thing that I can suggest to you is if the entire Planning Board thought it was okay, my client could be forgiven for thinking it was an okay site too, okay, I mean I think that you get the point is there's no point in getting upset, it's not the client, the clients picked the property. It was a desirable site. We listed a number of reasons why this application, this is a desirable site for it, for this use. Now, she came in here asking for a simple area variance, it looked to us like it was no problem.

MR. J. BABCOCK: First meeting wasn't just a simple area variance.

MR. DRAKE: Came here expecting that the only thing that was needed was an area variance because that is what the Planning Board told her.

MR. FENWICK: I think the Planning Board in my opinion they fired it in and fired it out real quick. We have an awful lot of evidence or statements that they didn't have in their hands since it just came to light two weeks ago and their decision, their concept was yes, it's a good idea and that is exactly what we're working on here. I don't think there's anybody here that thinks it's not a good idea.

MR. DRAKE: I was involved with a Planning Board for 25 years on Dan's side of the table. It's common if there's no problem, they need an area variance, you shoot the applicant off to the Planning Board to get that detail out of the way. If you can't get that detail out of the way, there's no point in proceeding. Then all of the other information that you are now eluding to, fire, traffic, safety, parking, architectural review, SEQPA, those issues are then determined by the Planning Board in the normal site plan process and that takes months.

MR. NUGENT: No, it doesn't.

MR. J. BABCOCK: You're 50% correct. You're right, it is their function but the function of this Board to grant a variance is to look at the health and safety issues.

MR. DRAKE: I am not asking you not to. All I am saying to you is that I thought that the Board in reading the last minutes, the Board had some concerns about issues like precedent and those issues.

MR. KONKOL: The first meeting, Mr. Drake the young lady came in and when we asked for different information, there was even reference to your letter which was not even in the file here.

MR. DRAKE: That's right, I know.

MR. KONKOL: We asked for more information. We asked for traffic study, fire report and then again, I think she came in a second time.

MR. FENWICK: This is actually the third preliminary. An attorney from your office, Ewall, Ms. Ewall, she was there.

MR. DRAKE: She is here.

MR. KONKOL: Let's stand corrected, this is the third meeting now and what we are trying to tell you and your

client that the whole concept is very nice but we question whether it belongs in this piece of property. I was down there today. I took this afternoon off and I went down there six times. I crossed 9W at the traffic light going east, came down, went up the road, very nice narrow little road, had to pull over to let another car pass me. I went out Ledyard (phonetic) Street to 9W. It took me five minutes to make a left hand turn south because of the traffic. Now, I came up and made another turn down again had to kind of dodge traffic, took my time coming around. This time, I went down John Street coming off of that, that's a thrill, make a turn, I had to cross the old bridge, go up to Devo Place, come down 9W again. This time I made a left on Ledyard Avenue and came out onto the street, had to pull over to let somebody else go by, got out to Walshes Road and then there is two tractor trailers full of oil coming up, had to wait for them. What are you going to do in a peak time in the morning when say 50 mothers are frantically going to go to work. They are going to drop their kids off, they are going to go here and there. That road is bad.

MR. DRAKE: I am not suggesting to the Board that all these issues do not have to be answered and resolved to the satisfaction of the Board. I am just saying that to do a traffic study now for example to get a variance from this Board, we are going to have to do that traffic study for the Planning Board.

MR. FENWICK: I have a traffic study.

MR. DPAKE: But these issues are going to have to be faced at the site plan level.

MR. KONKOL: It goes back to the Planning Board and sort of rubber stamping this unanimously as it is a good place for the site. I don't think they looked at it and I stand on the record that in your record here it indicates it's a school, it's not a professional business and a school doesn't belong there.

MR. TORLEY: A school there would require a use variance.

MR. KONKOL: Yes, it would.

MR. DRAKE: Why do you think it's a school?

MR. KONKOL: You say it in your own letter here that it is copied after the Waldorf School and we are going to have pre-nursery children from three weeks to three years.

MR. DRAKE: That is philosophy but that is the name of the particular underlining philosophical approach that they use in day-care, it's not a school.

MR. TORLEY: On your page 6 line 157 or 156 for the five year olds there will be a certified kindergarten program. That's a school in, to my mind.

MR. NUGENT: That's not in issue whether it's a school or whether it is an area variance.

MR. FENWICK: Right now we have an area variance before us that's what we are looking at, we are looking at an area variance. That is what was sent to us by the Planning Board. That is what we are addressing right now as an area variance.

MR. TORLEY: I could not vote on that appropriately without having the other items settled first. Would it be appropriate to move this to be referred back to the Planning Board?

MR. LUCIA: Is that's the feeling of the Board.

MR. KONNOL: I think that's where it belongs.

MR. LUCIA: I happened to be at the Planning Board meeting the night Ms. Guglielmi came in and you probably spent no more than two or three minutes presenting the entire thing to the Planning Board that night. This would have been October, late October.

MS. GUGLIELMI: That would have been the second meeting. First meeting was much longer.

MR. LUCIA: Basically, at that second meeting, your entire presentation was for the purpose of getting referral to this Board on the area variance.

MS. GUGLIELMI: No. Matter of fact, the purpose of that meeting was them to see the site plan done by Grevas & Hildreth.

MR. LUCIA: And the end result was they referred you here for an area variance?

MS. GUGLIELMI: Yes.

MR. LUCIA: It was very brief presentation. I am not sure that the Planning Board really did deal with the interpretation. They really only surfaced when it came here. Traffic and interpretation issues are not

before this Board. So, a lot of times the Planning Boards early on just review pro forma for purposes getting it to the Zoning Board.

MR. DRAKE: So what do you want the applicant to ask for, an interpretation at the Planning Board or ask for a total turndown.

MR. LUCIA: That's got to be this Board's feeling on how they want to send it back to you, do you want to send it back for a narrow or send it back saying we think there's an interpretation issue? Would you send it back to us for an interpretation of the use and use variance as well as the area variance?

MR. TORLEY: I'd like to make it as broad as possible. I'll veild to your expertise what would be the appropriate way to get the whole issue settled. What would be the appropriate referral?

MR. LUCIA: It has to be how the Board members feel. You either can send it back strictly saying we feel it's an interpretation issue, we'd like if referred back on that, we'll send it back for interpretation or use variance.

MR. NUGENT: No matter what we do, it's got to go back to them anyway.

MR. LUCIA: Unless the applicant chooses to proceed on a narrow area variance issue.

MR. DRAKE: It has to go back anyway.

MR. NUGENT: No matter what, it has to go back to the Planning Board.

MR. LUCIA: Correct.

MR. DRAKE: If we don't treat the area variance, we have to go back to the Planning Board and say we need something else, a different type of relief.

MR. NUGENT: I have no problem with dealing strictly with an area variance. I have no problem with taking that up for a vote.

MR. FENWICK: Sending it to a public hearing.

MR. NUGENT: Yes and let the Planning Board handle the rest of it and send a nice letter to them and let them handle it.

MR. FENWICK: Are you making a motion to set them up for a public hearing?

MR. NUGENT: I will.

MR. FENWICK: Do you want to review the application one more time?

MR. NUGENT: I make the motion based on this application right here.

MR. DRAKE: Is this the application before the Board?

MR. FENWICK: There's been some corrections.

MR. J. BABCOCK: The ones that are penciled in, Mike, did you do that?

MR. FENWICK: I did that. There were just some corrections over straightening the lines out, I believe.

MR. M. BABCOCK: Yes, the difference between the first application and this application is that it was decided that they needed two front yards and that was by their applicant, Bill Squires apparently when we made the application out, it needed to be 100 so they needed, they have John Street there was only 99 and the other one is 99, they need 100 on each one so that's the only difference.

MR. SQUIRES: If you remember when the application first came in, we had one front yard variance. That is right. Originally, it was one front yard variance and at the time I first appeared before you, I noted to you that there was, there should have been two front yard variances. That was a change that affected the application.

MR. M. BABCOCK: And that is the only change so they need a lot area, two front yards and a maximum building height.

MR. SQUIRES: That is correct.

MR. J. BABCOCK: What is the building height?

MR. M. BABCOCK: Thirty-two (32) feet.

MR. J. BABCOCK: Has that been determined?

MR. M. BABCOCK: That was supplied by their surveyor. Two feet five inches.

MR. SQUIRES: What is required based on 4 inches per foot was 29 foot 9, what is measured was 32 foot by the surveyor and that is really applicable whether it was measured off Walsh Avenue or Clinton Street.

MR. FENWICK: Mr. Drake, I have this one you're welcome to it.

MR. M. BABCOCK: I'm going strictly by what their surveyor is submittting to us on their site plan.

MR. KONKOL: Tall building.

MR. LUCIA: I think the area variance application before the Board is the one dated January 4th, 1991 as supplemented only by a subsequent verification by the State that the correct status of it because there were two separate applications by the applicant.

MR. SQUIRES: One comment I'd like to make is that this building being over 100 years old has all of those conditions in existence prior to the establishment of the zoning in this town.

MR. TORLEY: I think the two foot 3 inch height variance is the least of your problems.

MR. DRAKE: I would think so.

MR. M. BABCOCK: I just was to note one thing for the Board that these variances that the applicant is seeking right now are based on professional business use, okay, so if the use is changed from a professional business, these area variances also might be changed.

MR. J. BABCOCK: That is why I don't know how we can go ahead and vote for, have a public hearing on a variance when we don't know what the hell this thing is, is it a professional, is it, what are we going by, what Mike says.

MR. TANNER: I think I agree with you.

MR. J. BABCOCK: We are going by what Mike said because someone said as far as we're concerned, this is a professional use. Someone else said. What is it, what am I voting on, what will I be voting on? Am I voting on professional use, am I voting on a school, what is it now each thing has different criteria which it has to meet. I don't know how we can vote on an area variance when we haven't established what it is, what is the use. I can't.

MR. KONKOL: I think in fairness to your client, you can get the feeling of this Board.

MR. DRAKE: I have the feeling very clearly.

MR. KONKOL: You're going to have to go back to the Planning Board and get an interpretation.

MR. DRAKE: I feel that setting us up for a public hearing I thought the Board was, I didn't realize the Board was so opposed to the application when I came in here tonight as it obviously is.

MR. KONKOL: You can see why there are facts that are ambiguous to what it is, safety, that Fire Inspector's report is enough to say go on home and do your homework. We shouldn't even be listening to it right now.

MR. NUGENT: I have to ask a dumb question. Where did I get this from? Where did this come from, the denial?

MR. FENWICK: Come from the Planning Board.

MR. NUGENT: Based on what?

MR. FENWICK: What they are calling a professional building.

MR. NUGENT: Right, why are we beating it to death if that is what they said, it's fine.

MR. TORLEY: But we don't have to agree with them and I cannot ignore--

MR. NUGENT: The man is here looking for a variance. I don't care if the building is on top of Mt. Beacon. He needs a variance. We are not to look at all the other stuff.

MR. J. BABCOCK: Based on what, what are you going to base the variance on?

MR. NUGENT: On this, that's in front of me.

MR. J. BABCOCK: Is that the use that's in that zone?

MR. NUGENT: I don't know.

MR. J. BABCOCK: I don't know either. How are you going to vote on it if you don't know.

MR. FENWICK: I am going to say right now I'll get back

to it and I'll defer to our attorney. I'm going to have to agree with Jim, they have made it a use, they have established a use and Mr. Drake has addressed that in his notes and what not and his letter to this Board. I'm going to go to the attorney. They have said this is, they called it a professional use. They called it a professional business and I'll have to go along with what you said in your letter. They kind of established and they kind of interpreted what a professional business is. There is nothing there that says there's lawyers, doctors or anything else. It says professional business so it's up to them to interpret what a professional business is. I don't know whether that is right or wrong but that's what it looks like to me. What you have said it's a generic term professional business and it's up to them to say yes, it's a professional business, they have done that.

MR. J. BABCOCK: On a two minute presentation.

MR. KONKOL: If you feel their interpretation is wrong, I think it should go back to them with that opinion.

MR. LUCIA: That certainly can be this Board's position on it. It's up to the Board. As we talked about it before the meeting before the Planning Board was fairly briefed, you don't think anybody in any great detail ever analyzed whether or not this was in fact a professional business use. They basically sent it onto the Zoning Board for the area variance. We have seen the issue, we are entitled, as Mr. Drake is urging you to do to ignore it and we would be within our rights to do that if that is the feeling of the Board. However, the Board need not ignore it so it really comes down to your feeling as a Board.

MR. DRAKE: I don't really think Dan it's a question of ignoring it. I think the Planning Board didn't ask you to address it.

MR. LUCIA: Precisely.

MR. DRAKE: But Mr. Krieger was at the Planning Board meeting, was he not?

MR. LUCIA: That's correct.

MR. DRAKE: What happens if we go back to the Planning Board and they were very satisfied with our interpretation that this is a professional business. What happens to us then?

MR. LUCIA: They will remand you for the area variance.

MR. DRAKE: What happens if we come back here--

MR. TORLEY: You have said that we may have the right to ignore the issue or not to take it up but my conscience won't let me do that. I see something in front of me that gives me great reservation of kid's safety and health of kids for something that is a school.

MR. DRAKE: I think the Planning Board of the Town of New Windsor is composed of very serious minded men who are very concerned about those issues. It's their role to be concerned about those issues and address those issues, public health, safety and welfare, traffic, zoning, parking, fire.

MR. FENWICK: We are just kind of again beating a dead horse. Do I have a second for the motion to set this up for a public hearing and if I don't, do I have another motion to send this to the Planning Board?

MR. TORLEY: I have to move to refer it back to the Planning Board with our suggestions and comments.

MR. KONKOL: I second that.

MR. TORLEY: I don't know if I can do that with a motion on the floor.

MR. LUCIA: We have no second on the first motion.

MR. KONKOL: Let Dan go back with the details. Dan, also I'd like you to get an interpretation of this professional business because in Mr. Drake's letter here it says it's a non-profit organization and I haven't seen to many professional lawyers or doctors or dentists that work for nothing so I'm a little bit concerned there.

MR. LUCIA: Mr. Drake says a lot of these uses in the ordinance are generic type uses, you probably have to allow them some flexibility as to whether or not it's for profit or not for profit business. If it is a business type office but the issue the Board has trouble with is whether this is a professional business as opposed to a school or a day-care center.

MR. DRAKE: It's a day-care center, no question about that.

MR. TORLEY: Given that, we have x y z criteria for the Zoning Board.

MR. FENWICK: Let's get going. Can I have a roll call on this motion?

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. J. Babcock	Aye
Mr. Konkol	Aye
Mr. Nugent	Aye
Mr. Tanner	Aye
Mr. Fenwick	Aye

MR. DRAKE: Thank you very much.

MR. J. BABCOCK: I have to go to a School Board meeting so I have to leave now and I'd just like to say that I've enjoyed working with everyone here.

CC126A

INTER-OFFICE CORRESPONDENCE

TO: RICHARD FENWICK, CHAIRMAN
ZONING BOARD OF APPEALS

FROM: WALTER KOURY, CHIEF OF POLICE

DATE: DECEMBER 10, 1990

SUBJECT: TRAFFIC INFORMATION; WALSH ROAD

Pursuant to your request of November 30, 1990, I have collected traffic accident information in the immediate area of 257 Walsh Road which has occurred for the previous three (3) years. That data is as follows:

	1988	1989	1990 ytd
At the intersection of Route 9W and Route 94	8 PD 2 PI	5 PD 1 PI	4 PD 2 PI
At the intersection of Walsh Road and Route 9W:	9 PD 1 PI	4 PD 0	4 PD 1 PI
On Walsh Road; Route 9W east to River Road	1 PD	1 PD	4 PD
At the intersection of Walsh Road and John Street	0	0	0

PD = Property damage
PI = Personal injury

Please feel free to contact me should you require any additional information.

rec'd
1/14/91

INTER OFFICE CORRESPONDENCE

TO: Town Planning Board

FROM: Town Fire Inspector

DATE: 30 October 1990

SUBJECT: Wind in the Willows, Inc. Site Plan (Walsh Ave.)

PLANNING BOARD REFERENCE NUMBER: PB-90-46

DATED: 18 October 1990

FIRE PREVENTION REFERENCE NUMBER: FPS-90-097

A review of the above referenced subject site plan was conducted on 30 October 1990.

The concept of this site plan is acceptable, however, it is the opinion of this writer that this building is a three (3) story structure of type 5b construction. Under Title 9 NYCRR, occupancy groups C6.1 and C6.2 are not permitted to occupy a three (3) story, type 5b structure.

This site plan is rejected.

PLANS DATED: 17 October 1990.

Robert F. Rodgers
Robert F. Rodgers, CCA
Fire Inspector

RR:mr
Att.

**PREVIOUS
DOCUMENTS
IN POOR
ORIGINAL
CONDITION**

PLANNING BOARD
TOWN OF NEW WINDSOR

AS OF: 07/03/91

PAGE: 1

LISTING OF PLANNING BOARD FEES
Escrow

FOR PROJECT NUMBER: 90-46

NAME: WIND IN THE WILLOWS, INC. (DAY CARE CENTER)
APPLICANT: WIND IN THE WILLOWS, INC.

--DATE--	DESCRIPTION-----	TRANS	AMT-CHG	AMT-PAID	BAL-DUE
07/03/91	P.B. ENGINEER FEE	CHG	591.50		
10/18/90	SITE PLAN MINIMUM	PAID		750.00	
		TOTAL:	591.50	750.00	-158.50

Please issue a check in
the amount of \$158.50 To:

Wind in the Willows, Inc.
P.O. Box 332
Newburgh, N.Y. 12550

Sent to Larry R. 7/3/91

Wind in the Willows, Inc
P.O. Box 332
Newburgh, New York 12550

14, June 1991

Town of New Windsor Planning Board
New Windsor, New York

RE: \$750.00 DEPOSIT FOR SITE PLAN REVIEW

To whom it may concern:

Please be advised that Wind in the Willows, Inc., regrestably,
is withdrawing its application before the Planning Board.

Thank you,

Calais Guglielmi

Calais Guglielmi
Wind in the Willows, Inc.

cmg/TGF

PLANNING BOARD
TOWN OF NEW WINDSOR

AS OF: 07/03/91

PAGE: 1

LISTING OF PLANNING BOARD ACTIONS

STAGE:

STATUS [Open, Withd]
W [Disap, Appr]

FOR PROJECT NUMBER: 90-46

NAME: WIND IN THE WILLOWS, INC. (DAY CARE CENTER)

APPLICANT: WIND IN THE WILLOWS, INC.

--DATE--	MEETING-PURPOSE-----	ACTION-TAKEN-----
06/14/91	RECEIVED LETTER OF WITHDRAWAL	APPLICAT. WITHDRAWN
06/10/91	Z.B.A. APPEARANCE	DISAPPROVED BY ZBA
03/13/91	P.B. APPEARANCE	REFER BACK TO Z.B.A.
10/24/90	P.B. APPEARANCE	REFER TO Z.B.A.
10/16/90	WORK SESSION APPEARANCE	SUBMIT PLANS

PLANNING BOARD
TOWN OF NEW WINDSOR

AS OF: 03/13/91

PAGE: 1

LISTING OF PLANNING BOARD AGENCY APPROVALS

FOR PROJECT NUMBER: 90-46

NAME: WIND IN THE WILLOWS, INC. (DAY CARE CENTER)
APPLICANT: WIND IN THE WILLOWS, INC.

	DATE-SENT	AGENCY-----	DATE-RECD	RESPONSE-----
ORIG	10/18/90	MUNICIPAL HIGHWAY	/ /	
ORIG	10/18/90	MUNICIPAL WATER	10/19/90	APPROVED
ORIG	10/18/90	MUNICIPAL SEWER	/ /	
ORIG	10/18/90	MUNICIPAL SANITARY	10/19/90	APPROVED
ORIG	10/18/90	MUNICIPAL FIRE	10/30/90	DISAPPROVED
		. A 3 STORY BLDG OF TYPE 5B CONSTRUCTION CANNOT HAVE THIS USE		
		. ABOVE CONTINUED: SEE REVIEW SHEET IN FILE		
ORIG	10/18/90	PLANNING BOARD ENGINEER	/ /	

7-8-91

FORMAL DECISION: WIND IN THE WILLOWS

MR. KONKOL: I make a motion that we accept the formal decision of Wind in the Willows. A copy of said decision is attached and made part of the minutes.


MR. NUGENT: I'll second it.

ROLL CALL:

Mr. Torley	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

Being that there was no further business to come before the Board a motion was made to adjourn the meeting by Mr. Nugent seconded by Mr. Tanner and approved by the Board.

Respectfully submitted;



Frances Sullivan
Stenographer

-----X

In the Matter of the Application of

FORGE HILL COUNTRY FURNITURE, INC.

DECISION GRANTING
SIGN VARIANCE

#91-10.

-----X

WHEREAS, FORGE HILL COUNTRY FURNITURE, INC., a corporation having an office located 815 Blooming Grove Tpk., New Windsor, N.Y. 12553, has made application before the Zoning Board of Appeals for 48 s.f. sign area variance for a free-standing directory sign at the above address in a C zone; and

WHEREAS, a public hearing was held on the 10th day of June, 1991 and adjourned to, and continued on the 24th day of June, 1991, and again adjourned to, and continued on the 8th day of July, 1991, before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Jane Tanner, President of the above-named corporation, was present for the hearing and spoke on behalf of the applicant in support of the application; and

WHEREAS, the application was unopposed; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings of fact in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.
2. The evidence shows that the applicant is seeking to construct a free-standing directory sign to be placed on the front portion of the above parcel.
3. Applicant's proposed sign area exceeds the bulk regulations for signs in the C zone by 48 s.f.
4. The evidence presented and the Board's familiarity with the area shows that Route 94 in front of the applicant's site is a well-traveled highway, and that motorists typically pass the subject site in excess of 45 m.p.h., which makes clear signage identifying the location of area businesses essential to passing traffic.
5. The evidence presented by the applicant indicated that the proposed sign is required because of recent expansion of the building adds a number of businesses which have no road frontage and are not readily visible from the road. Thus, these businesses require signage at the roadside to identify their location and provide them with

exposure.

6. The evidence presented by the applicant indicated that the proposed sign would consolidate the signage onto a single directory sign with inserts for the respective businesses, thereby eliminating the possibility of 15-20 small separate signs along the road.

7. The evidence presented by the applicant further indicated that a recent reconfiguration of the swale along Route 94 has obscured the present sign, making the proposed sign a necessity for adequate visibility to passing traffic.

8. The evidence presented and the Board's familiarity with the area shows that the sign will be located along a major highway, not too far from a busy intersection, where a multitude of signs are located, which further hampers visibility of signs located in this area.

9. The evidence presented further showed that the proposed signs will facilitate ready identification of the applicant's property by passing motorists.

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law in this matter:

1. The evidence shows that the applicant will encounter practical difficulty if the sign variance requested is not granted due to the fact that this is a well-travelled highway and signs readily identifying the applicant's existing as well as the new commercial businesses are required.

2. The proposed variances will not result in substantial detriment to adjoining properties or change the character of the neighborhood since the neighboring properties are mixed use in character and the proposed sign merely replaces and enlarges somewhat the existing sign.

3. The proposed request for a sign variance of 48 s.f. sign area is not considered excessive with relation to the other signs which are located on nearby site commercial properties, given the fact that the subject site requires signage for several businesses, some of which have no road frontage.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a sign area variance of 48 s.f. as requested above in accordance with plans presented at the public hearing and on file in Building Inspector's Office.

BE IT FURTHER,

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.

Dated: July 8, 1991.


Chairman

ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

-----X

In the Matter of the Application of
WIND IN THE WILLOWS, INC. and
ESTATE OF GERALDINE CARFORA:

#90-38.

DECISION INTERPRETING THE
ZONING LOCAL LAW OF THE
TOWN OF NEW WINDSOR,
SEC. 48-9, TABLE OF USE/
BULK REGULATIONS, PLANNED
INDUSTRIAL (PI) ZONING
DISTRICT - COLUMN A, USE 1,
AND DENYING AREA VARIANCES.

-----X

WHEREAS, the applicants, WIND IN THE WILLOWS, INC. of P. O. Box 332, Newburgh, N. Y. 12550, and the ESTATE OF GERALDINE CARFORA, % Daniel J. Bloom, Esq. of Bloom & Bloom, P. C., 530 Blooming Grove Turnpike, P. O. Box 4323, New Windsor, N. Y. 12553, prospective purchaser and owner, respectively, have made application before the Zoning Board of Appeals for an interpretation of the Zoning Local Law of the Town of New Windsor, Section 48-9, Table of Use/Bulk Regulations, Planned Industrial (PI) Zoning District, Column A, Use 1, to classify the use proposed by WIND IN THE WILLOWS, INC. as a "professional business", thereunder, and, if the said proposed use is interpreted to be permitted as of right, then a further application for the following area variances: (1) 11,265 sq. ft. lot area, (2) 10.7 ft. front yard, (3) 7 ft. front yard, and (4) 2 ft. 3 in. maximum building height; and

WHEREAS, a public hearing was held on the 10th day of June, 1991 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the applicants were represented at said public hearing by Calais Guglielmi, the Executive Director of WIND IN THE WILLOWS, INC., and by its attorney, Kevin T. Dowd, Esq. of Drake, Sommers, Loeb, Tarshis and Catania, P.C., in support of the application; and

WHEREAS, the public hearing was attended by a number of spectators (including one of the heirs of the late Geraldine Carfora and the husband of said heir) who spoke of the great need for day care centers, and many of them spoke in favor of the interpretation requested by the applicants, and by one spectator who said she had reservations about the financial ability of the applicants to make the necessary improvements to the building to comply with the applicable codes, and by another spectator who opposed the location of a day care center on this site, and in this building, due to hazards related to fire, parking and the proximity to a major road intersection; and

WHEREAS, the applicants' attorney submitted a Memorandum of Law, copies of statutes and of reported decisions of a number of court cases; and

WHEREAS, the applicants submitted a number of letters from elected officials, Cornell Cooperative Extension, United Way, and employers whose employees indicated a need for day care in support of

the application; and

WHEREAS, the Zoning Board of Appeals received and filed correspondence from Robert F. Rodgers, CCA, Fire Inspector, dated October 30, 1990 rejecting the applicants' site plan on the grounds that the occupancy groups proposed by the applicants were not permitted to occupy a three-story structure of Type 5b construction; as well as from Walter Koury, Chief of Police, dated December 10, 1990 summarizing the number of traffic accidents involving property damage and personal injury at intersections out on roads in the immediate areas of the site during 1988, 1989 and 1990 to the date thereof; and

WHEREAS, one of the spectators submitted a proposed model zoning code, concerning child care centers, prepared by the Rockland County Planning Office; and

WHEREAS, the Town of New Windsor Building Inspector stated that there are two existing day care centers in the Town of New Windsor at the present time, and a third day care center that is in the process of opening now; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings of fact in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. At the outset of the public hearing it appeared that the list of property owners which the applicant obtained from the Town Assessor's office included a note to the effect that the 500 ft. radius from the lot lines of the subject property included property in the City of Newburgh. The applicants did not separately obtain a list of property owners within the City of Newburgh whose property was located within such 500 ft. radius and thus such property owners within the City of Newburgh were not given notice by mail of the public hearing.

3. The Zoning Board of Appeals finds that the Zoning Local Law of the Town of New Windsor, Section 48-34(A) requires notice of the public hearing to be given by mail to all owners of property which lie within 500 ft. of any lot line of the property for which relief is sought. The said provision, at Section 48-34(A)(1), requires that the names of said owners shall be taken from the last completed tax roll of the Town (which necessarily would exclude property owners within the City of Newburgh).

4. Without deciding under the foregoing provisions of the Zoning Local Law whether notice to such property owners within the City of Newburgh and within the 500 ft. radius is required, or alternatively, is not required since their names are not contained on the Town's tax roll, it is the finding of this Board, pursuant to the Zoning Local Law of the Town of New Windsor, Section 48-34(A)(2), that, since due notice has been published in The Sentinel, and since notice of the public hearing was given by mail to all property owners within the Town within the 500 ft. radius, that such notice has been substantial compliance with the notice requirements, even if such notice was not

in exact conformance therewith, and thus shall not be deemed to invalidate any action taken by this Board on this application.

5. The evidence presented at the public hearing indicated a general need for day care centers. It must be presumed that said need is being met, at least in part, by the two existing, and one soon-to-be-opened, day care centers. The Board accepts the general need for day care centers and notes that said need is being met, at least in part, within the bounds of the Town of New Windsor at the present time.

6. However, the issue before this Board is not the general need for day care centers. If that general need is not being adequately addressed within the bounds of the Town of New Windsor, the issue should be presented to the Town Board. It is the Town Board which can best assess that general need, and, if warranted, address it through appropriate legislative action.

7. The limited issue before this Board is whether the applicants' proposed use can be classified under the uses permitted by right in Column A, Use 1 of the Table of Use/Bulk Regulations for the Planned Industrial (PI) Zoning District.

8. In deciding upon the interpretation requested by the applicants, this Board is mindful of the mandate contained in the Zoning Local Law of the Town of New Windsor, Section 48-34(F), as follows:

All the provisions of this local law relating to the Board of Appeals shall be strictly construed. Said Board as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this local law in compliance with all limitations contained therein.

9. The Zoning Local Law of the Town of New Windsor, Section 48-9, Table of Use/Bulk Regulations, Planned Industrial (PI), Zoning District, Column A, Use 1, provides:

Uses Permitted by Right

1. Professional business, executive and administrative offices and buildings²

10. It is the finding of this Board, in interpreting Column A, Use 1 above that the uses permitted by right are "offices and buildings". The Board further finds that the words "professional business, executive and administrative," are all used to modify the permitted uses - "offices and buildings".

11. This interpretation is consistent with other uses permitted by right in Column A. Permitted uses 2 and 3 in Column A each list "Businesses" (emphasis supplied) of a certain type as the permitted use.

12. If the Town Board had intended "professional business" to be a use permitted by right, in and of itself, consistency would require that it be plural, and be set off from the balance of the phrase with the conjunction "and" as follows:

1. Professional businesses and executive and administrative offices and buildings (emphasis supplied for additions to the Zoning Local Law, as enacted).

13. Thus the Board finds that the applicants have the burden of establishing not merely that their proposed use is a "professional business", but that their proposed use falls within the purview of the Town Board in listing users permitted by right as "professional business, executive and administrative offices and buildings".

14. The importance of making this distinction is that it helps clarify, in this Board's view, just what was the intent of the Town Board in adopting this provision of the Zoning Local Law. If "professional business", an undefined term, were in and of itself a use permitted by right, that creates in the mind's eye a different picture from that conjured up for "professional business, executive and administrative offices and buildings" - taken as a whole, as uses permitted by right.

15. The applicant, WIND IN THE WILLOWS, INC. proposes to use the site for a day care center, which will be licensed for 73 children but which Ms. Guglielmi stated will operate with 64 to 74 children, and will include a pre-school nursery-or-kindergarten-type-of-class for 5 year-old children, although it will not be a school. The day care center will be licensed by the Department of Social Services. It will not be licensed or registered by the Education Department since the said applicant believes it to be an "exempt school" under the provisions of Education Law, Section 5001(2)(b).

16. The said applicant proposes to staff the day-care center with 22 people including one nurse practitioner, one on-call pediatrician (not on the premises), one licensed practical nurse, three nursing assistants, one head teacher (who is a certified kindergarten teacher), and three teachers who are certified child care providers. It would appear that some 9 or 10 of these staff members are "professional people, given a broad interpretation of the word "professional". However, this Board does not find that a person serving in the capacity of a "nanny", as Ms. Guglielmi refers to her staff members, is necessarily a "professional" person. Similarly, although day care involves disciplines which are "professional", this Board does not find that day care on balance is a "professional" activity.

17. The said applicant proposes to open its day care center at 6:00 a.m. and close it at 6:00 or 6:45 p.m. and will accept children from age 12 weeks through 12 years old.

18. The said applicant urges upon this Board the proposition in that the child care staff are professionals. In partial support of this position, the applicant cites the definition of "home professional office" from Zoning Local Law Section 48-37, which provides in part as follows:

HOME PROFESSIONAL OFFICE - Any gainful service occupation Permissible "home professional offices" include but are not limited to the

following: offices of a clergyman, lawyer, physician, dentist, architect, engineer or accountant; and other instruction limited to teaching with music, dancing and the like.

19. Although not binding here, this definition does provide this Board with some guidance. One thread which sews through all the cited "professions" is that the patient, client or student typically comes to the professional for a limited period of time for examination, consultation or instruction and then leaves. This same aspect of the patient or client coming to the professional for a limited period of time for drug abuse counseling, and then leaving, also applies to the facts of the case of Taylor v. Foley, 122 App. Div.2d 205, 505 N.Y.S.2d 166 (2d Dept. 1986) cited by the applicant.

20. The Board finds a fundamental difference between such professional businesses, in which patients, clients or students come to a "professional" for a limited period of time for examination, counseling or instruction, and then leave, and the applicants' day care center which, by its nature, entails children coming and staying for long periods of time upon the applicants' premises.

21. The Board finds that the intensity of use of premises used for "professional business, executive and administrative office and buildings" was intended by the Town Board to be similar. Certainly all such offices and buildings could be expected to have patients, clients, students, customers and visitors coming and going. The only people who typically would be on the premises every day, day after day, would be the principals, officers or employees. The visitors would be continually changing and they would stay for limited periods of time. In the case of a day care center, the fundamental difference is that the children, i.e. those analogous to patients, clients or customers would not be continually changing but basically the same group of children would come and stay at the premises for relatively long periods of time up to an entire day, every day, day after day.

22. Due to the different intensity of use of premises made by a day care center compared to "professional business, executive and administrative offices and buildings", and especially the intense use by young children in a day care center, this Board finds that the health, safety and welfare issues which arise from the said uses are substantially different. Because of these substantial differences this Board finds that the Town Board would not necessarily have equated a day care center use with a use for "professional business, executive and administration offices and buildings", because substantially different parameters for fire and emergency vehicle access, traffic congestion, and impact on governmental facilities, as well as the health, safety and welfare considerations of the users of the building would apply.

23. This Board was most concerned by the correspondence from Fire Inspector Rodgers rejecting the applicants' site plan and from Chief of Police Koury listing an average of approximately 15.7 traffic accidents per year in the immediate area of the applicants' site.

24. Considering the applicants' proposed use as a whole, and considering the health, safety and welfare issues which arise upon

placing 64 to 74 (and up to 78) children in a building of 5,004 ± sq. ft. floor area, located in the Planned Industrial (PI) Zoning District, it is the finding of this Board that such use is substantially different from the uses permitted by right, envisioned by the Town Board, when it was determined to allow "professional business, executive and administrative offices and buildings" therein.

25. The applicants have urged this Board to interpret the Zoning Local Law favorably to their proposal on the grounds that New York State public policy, as expressed in Social Services Law Section 410-d, encourages the construction and equipment of day care facilities.

26. While the Board recognizes and agrees with the stated public policy, the Board does not find that said policy pre-empts the Zoning Board of Appeals from interpreting the Zoning Local Laws according to all applicable provisions of New York State Law and of the Zoning Local Law itself.

27. The Board finds that the provisions of Social Services Law Section 390(12) do constitute a state pre-emption in the area of home day care. People v. Town of Clarkstown, 160 App.Div.2d 17, 559 N.Y.S.2d 736 (2d Dept. 1990).

28. The Board does not find, and the applicants' attorney was unable to cite the Board to any case analogous to the Town of Clarkstown case supra which constitutes a similar state pre-emption in the area of day care facilities other than in homes, pursuant to Social Services Law Section 410-d. The Board finds that there is no state pre-emption of regulations of non-home day care facilities pursuant to Social Services Law Section 410-d.

29. In the absence of a state pre-emption governing the present application, it is the finding of this Board that the foregoing interpretation is within the power of this Board, and does not contravene the New York State public policy contained in Social Services Law Section 410-d.

30. Since the applicants' proposed use of the premises was interpreted by the Board as one which is not a use permitted by right, the applicants did not proceed with their application for area variances, and offered no evidence at the public hearing in support thereof.

31. It is the finding of this Board that the applicants abandoned their application for area variances as moot.

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law in this matter:

1. The proposed use of the site as a day care center is not interpreted as a use permitted by right, to wit, it is not included within "professional business, executive and administrative offices and buildings" as contained in the Zoning Local Law of the Town of New Windsor, Section 48-9, Table of Use/Bulk Regulations, Planned Industrial (PI) Zoning District, Column A, Use 1.

2. The area variances requested by the applicants are denied as moot.

NOW, THEREFORE, BE IT

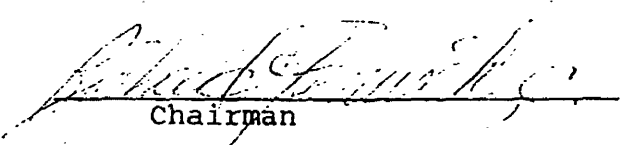
RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor INTERPRET the Zoning Local Law of the Town of New Windsor Section 48-9, Table of Use/Bulk Regulations, Planned Industrial (PI) Zoning District, Column A, Use 1 as not including the proposed use of the site as a day care center within the use permitted by right thereunder as a "professional business, executive and administrative offices and buildings".

BE IT FURTHER

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor DENY as moot the area variances requested by the applicants.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of the decision to the Town Clerk, Town Planning Board and the applicant.


Chairman

Dated: July 8, 1991

(ZBA DISK#6-070891.)

PUBLIC HEARING: WIND IN THE WILLOWS 90-46

MR. FENWICK: This is a request for interpretation and 11,265 square foot lot area, 10.7 feet and 7 feet front yard variance and 2 feet 3 inch building height to operate day-care center in PI zone.

Kevin T. Dowd, Esq. came before the Board representing this proposal.

MR. DOWD: Good evening, gentlemen. For the record, my name is Kevin Dowd from Drake, Sommers, Loeb, Tarshis & Catania, One Corwin Court, Newburgh, New York. I'm here tonight to represent the interests of our client's, Wind in the Willows, Inc. The executive director, Calais Guglielmi is here and you'll be hearing from her shortly.

Generally, I believe you all know--

MR. LUCIA: Before you go on, just one housekeeping matter. Looking at the file this afternoon, I noticed that the list of property owners that you received from the Town Assessor had P.S. on it saying did not include the property owners within 500 foot radius of the property line or in the City of Newburgh. Did you separately find a list from the City Assessor of those property owners?

MR. DOWD: I thought that included the City of Newburgh.

MR. LUCIA: Okay, take a look at it. The note on Leslie Cook's letter to Ms. Guglielmi of April 26th, 1991 says note please be advised that the 500 foot radius on this variance list encompasses a portion of the City of Newburgh. I'm not sure that the Town Assessor, without separately consulting the city tax rolls, has those addresses.

MR. DOWD: There was a distinct interpretation that that list did not include all the property owners that had to be included. We notified everyone on that list.

MR. LUCIA: I assumed you did that.

MR. DOWD: I do believe that that, there was a interpretation to Ms. Guglielmi that the individual property owners did not have to be notified, just the City of Newburgh itself and in that case, if we failed to notify the City of Newburgh, that would be one in a large number of property owners who we did notify and that would be

substantial compliance with the intent of the statute.

MR. FENWICK: City of Newburgh was in fact notified.

MR. DOWD: They were not notified through my office. It was my understanding that the entire list was there. I thought that was including all the property owners in the city and Town of New Windsor.

MR. LUCIA: This is a question for the Board and I just want to get away, get it out of the way preliminarily so we have a housekeeping matter finished. Our zoning Local Law Section 4834A provides that the Board of Appeals shall cause such notice to be mailed 10 days before the hearing to all owners of property which lie within 500 feet of any lot line for which, of property, for which relief is sought. That would seem to include those who reside within the City of Newburgh, if it fits within the 500 foot radius.

MR. FENWICK: You're saying no one in fact except what was on that list, how many people do we have on the list?

MRS. BARNHART: I have an affidavit, my own affidavit, that I mailed out 57 notices on May 23rd, 1991 and he complied with what he was supposed to do, as far as the list goes. So, I don't know.

MR. FENWICK: I'm going to leave it up to the Members of the Board. My feelings are that we have got to get going on this.

MR. TORLEY: How far from the property, town line is your property line?

MR. DOWD: That again, I don't --

MR. TORLEY: Your property line doesn't abutt it, the City of Newburgh?

MR. KONKOL: Most of the land in back of Diamond Candle, it's sort of a nomads land. It's supposed to be right-of-ways, water lines and sewer lines. I don't think it affects any individual properties, nor do I think it's going to affect the city.

MR. DOWD: I don't believe the city itself is a property owner.

MR. NUGENT: It is, they have an easement through there.

MR. DOWD: I would have, when I read the list, I assumed

that everyone is there at least when it said City of Newburgh, City of Newburgh would have been addressed on the list we had generated.

MR. FENWICK: I know exactly what you're saying.

MR. LUCIA: It's really, falls within the discretion of the Board. Continuing on in Section 4834A Subparagraph 2 provides that due notice shall have been published which it was in this case and that there shall have been substantial compliance. The failure to give notice in exact conformance shall not be deemed to invalidate action taken by the Board of Appeals in connection with granting any permits so it's up to the Board. I thought we ought to get it out of the way, since it's potentially and issue.

MR. TORLEY: The area is basically sewage right-of-way and junk.

MR. FENWICK: That's heresay at this time but what I'd like to do, I'd like to ask the attorney if it would be in order to make a motion that we hear this.

MR. LUCIA: I think yes, maybe the motion should be that the board having considered the issue deems the mailing to have been substantial compliance with Section 48-34 requirements.

MR. FENWICK: With the public hearing notice.

MR. NUGENT: I'll make that motion.

MR. KONKOL: I'll second it.

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

MR. DOWD: Thank you, gentlemen. When you read the letter, you believe when you do these many times, you get the list and you send out exactly what's on the list and you do not think there's something missing from the list without some sort of asterisk to tell you to do something.

In any event, I appreciate your consideration.

MR. FENWICK: I'd just like to say something before you get started. Please address what you're here for, that's exactly to prove that this is in fact a professional business and it does in fact belong in this zone.

MR. DOWD: Yes, sir. We have been here, it's the 5th time before this Board and we have been before the Planning Board three different times. My client is here to answer any questions you may have. It's my intention tonight to allow her to explain to you, to this Board, exactly what this program and this building and this particular setting is all about so that the Board will have a clear understanding of what we are asking for. And then, in that context, go into the argument that it's a professional business, the legal issues of a variance and then have anyone you want from the public address any issue they particularly want to speak about.

Tonight, I ask the Board to allow me a little bit of leadway. It would be helpful to this Board to understand what my client wants to do with this property and in that respect, it's important that you understand that. I would ask also that this Board, upon the conclusion of this public hearing, since it has been a long trek through a number of Boards and my client has been working at this almost a year and she's under contract to purchase this property, that this Board consider giving decision tonight. It's very important for her. The contract basically would expire tonight without a variance, she cannot go very much further. However, if she does get the necessary interpretation and the variance tonight, she can proceed to buy the property and begin the long process through the Planning Board in the site plan approval process, in which a lot of your concerns at the last four meetings and the Planning Board's concerns can be addressed at that site plan approval process. With that said, I would ask Ms. Calais Guglielmi to step forward and very briefly introduce to this Board again exactly what her plans are for that particular site and why she wants this site for her day-care center.

MS. GUGLIELMI: Good evening, my name is Calais Guglielmi and I'm the Executive Director of Wind in the Willows, Inc. This corporation was set up as not for profit corporation under New York State Not for Profit Corporation Law. We have been looking for a home for Wind in the Willows for almost three years now. In the beginning of last year, we found a home. There are other pieces of property that had asbestos problems, too much of a liability and would

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cause great deal of concern for the safety of the children so we have abandoned several pieces of property. So, this is not just to let you know, this is not the first piece of property that we have come about looking at it.

The program itself will service children from 12 weeks to 12 years old. And it's separated by individual age groups from 12 weeks to 3 years old. There will be the care of infants in an infant program. The infant staff will be required to have a medical background in various ranks of the medical field, from a pediatrician who will be on call to nurse practitioner, LPN and so on and so forth. We classify that staff as nannies. To the infant program, the early childhood program, which will be 3 years to 5 years old, will be primarily staffed with people who will have a bachelor's degree or associate's degree and a certified teacher on staff as well for early childhood education. The after school program, which will only encompass a maximum of 25 children, so it's relatively small, we are including this as an additional service to the area employees and working families and the school district in the area, that would like some support on this program. It will be staffed with the same as the early childhood program and occasional nanny as their shift changes during that time. The program itself and the environment of the building and one of the reasons why that was so important is based on a large part with the central ideas that underlie the Waldorf Education and the early childhood environment. This environment is very specific to the needs of children and this does not counteract with any of the safety that we're providing for the children but it does require a natural home like environment for the children. The materials and things that are used, that the children use must all be natural materials. You will note, for example, walking into a room there, you would not walk into a room of Fisher-Price, okay, all of the toys are made out of wood. All of the soft toys that are made use real wood. Instead of playdough, they use beeswax, beeswax crayons.

There's an emphasis on the children's relationship with the staff. This is very important and because of that, there are, there's a very specific training for this staff, which the staff will be a part of and above their curriculum and requirements for early childhood education that they come to us with. We will then have to put them through additional training. The grounds is also very important as part of the curriculum as the children and the natural environment of outside is also part of the Steiner environment. We plan, and it's very important to us, to maintain and clean up the property and restore it.

Landscaping, as far as that is concerned, there are a lot of fruit trees that will be taken care of. There will be permanent fencing put around as well as interior fencing separating certain play areas.

MR. FENWICK: I have to hold you up just a second. We're supposed to hand out a roster and we forgot. Something we don't forget usually. If there's anyone here in the audience that's here to speak on this or is here in reference to this public hearing, just sign this please, name and address. I hope you didn't lose your place, go ahead.

MS. GUGLIELMI: No. I say this day-in and day-out so -- we have a Board of Directors of four. At this time, on the Board of Directors is the President of Jemark Corporation who until just recently, had one of his manufacturing plants in New Windsor up by Devitt's, I believe there's still a sign there but I don't believe it's in operation at this time. He still has one in operation in the City of Newburgh and in Pennsylvania. He's the Chairman of our Board. His name is Mario Battelic (phonetic). On the Board, we also have Jill Gomez, who's currently in Maryland at the time of this hearing. Norman Snar (phonetic), who's a resident and the bishop of the Church of Jesus Christ of Latter Day Saints is on the Board. He came before you, I don't know if you remember him or not, he came for the church business. Also, is Frances Parker who is the treasurer of Black Rock Broadcasting Corporation and she's currently in another meeting and would be unable to attend tonight. So, that's the Board of Directors.

The other situation is the need for the area. It's very immense. There's an overwhelming need for this service in the area. I have parents that have been waiting for almost a year, since we have contracted on this property, who are residents of New Windsor who have looked at other options and have been told they'd have to wait until the end of next year or the quality of the service that the other child care center was providing was not what they were looking for. They needed more and we're offering more and a full service situation. It's not a very big center. The scale is very small. Considering other day-care centers and the type of building we have is much larger than the space that other day-care centers provide. Our overall staff ratio is 4 to 1 and so each child is getting much more of an individual attention from infants through 12 years than at any other day-care center in this area.

If there are any other specific questions, I sort of ran

through it as an overview not to take up too much of your time.

MR. FINNEGAN: Is the primary function that of a school or of a day-care center?

MS. GUGLIELMI: Day-care center.

MR. FINNEGAN: Educational aspect just accessory type function?

MS. GUGLIELMI: The Waldorf Education is so different from the normal standard education that to answer your question, it would be yes. Children learn things from things that the normal realm of education wouldn't normally expect them to learn from, okay, and inasmuch as that, it's not the way the normal education is. We have an emphasis on gardening, for example. The need for, you know, the growing of vegetables and fruits and corn and things like that. That's a regular part of the curriculum, okay, what a child would learn from gardening everyday would be essentially maybe the same thing they'd learn from learning how to count to ten at a table with a ditto sheet. Our approach is different, very different. And more natural approach. It's an approach that's not although accepted by the Board of Education, when you get higher up in schools, this early childhood segment of it is definitely not a school. As a matter of fact, in this type of curriculum, they probably, it's their idea for an age for a child to start school is age seven whereas here, we have it at age six, which would be the first grade since kindergarten is not a requirement in the State of New York.

MR. FINNEGAN: You don't have first graders?

MS. GUGLIELMI: No, absolutely not, unless they come after three o'clock at which time it's a latch-key program and I have, you know, there's a period of time when we have quite time. If they have homework or something between the age of 6 and 12, we would encourage that. They do something like that and then it's basically set up for activities, extra-curricular type activities.

MR. FINNEGAN: Why is it necessary to have the staff with teachers as opposed to say social workers?

MS. GUGLIELMI: To have a degree in early childhood education doesn't necessarily, it puts you in the realm to teach small children. Not necessarily, would you teach first grade. So, there's a difference in how you relate to a child who is 3 or 4 years old and 6 or 7. There are

a lot of people who have bachelor's degrees in early childhood education who do not have a certificate for teaching elementary school. For example, their years of experience are with young children so there's a difference and a lot of them prefer to keep that professional level right there and it's a very widely growing field of professionals.

MR. DOWD: To add what Calais said, there's a requirement by D.S.S., that there be a teacher in the program.

MS. GUGLIELMI: Yes, certified teacher.

MR. DOWD: Must be in the program by the Department of Social Services regulations.

MS. GUGLIELMI: As a program supervisor --

MR. TORLEY: Kindergarten in one of the early certified kindergarten programs --

MS. GUGLIELMI: Not certified.

MR. DOWD: No certification process to certify a school, request something from the Department of Education and we are not seeking that nor do kindergarten or nursery school programs have to be certified by the Department of Education. This program that Calais is talking about is basically a pre-school type of a program. If you want to call it that, it's a little bit more involved in here. The Waldorf theory of education as opposed to standard book learning that children are used to in kindergarten and again, most of -- there are a tremendous amount of requirements that the Department of Social Services requires to get licensed for a day-care center of this kind of facility. And she must comply with those regulations and one of them requires certified teachers. There's no organized school kindergarten program or anything like that in the curriculum.

MR. NUGENT: Could you tell us a little more of the regulations that she has to comply with?

MR. DOWD: Sure.

MR. FINNEGAN: How many children will be attending the whole program?

MS. GUGLIELMI: We have applied for a license for 78. However, we'll operate with between 64 and 74.

MR. FINNEGAN: Maximum of 78?

MS. GUGLIELMI: Well, that may come back less so we have allowed for that possibility, just because of the arrangements of classrooms and how many children in each classroom so I picked that much and I was conservative and it will more than likely be between 64 and 74.

MR. TORLEY: In your memo that was back in January, you show on your page 6 line 157 that there will be a certified kindergarten program. That's no longer the case?

MS. GUGLIELMI: It will not be certified. It will be a certified teacher teaching that class but will not be registered with the State Department of Education. The term that the State Department of Education is that registering with them, if you register your kindergarten with them, then it's now under the regulations of the State Department of Education. The staff will be in charge of that room, will be a certified teacher.

MR. DOWD: If I may, maybe this might help clarify. I have here a Section 5001 of the State Education Law concerning schools required to be licensed and registered and I'll hand it to your counsel and he can then hand it out to everyone else. I highlighted the area where it shows you that kindergartens do not have to be licensed by the State Education Department. They are not an entity that requires certification by the Department of Education. They are not basic schools.

MR. TORLEY: They are required but may be certified?

MR. DOWD: They could be, if you wish to have them certified, you could apply for a certificate process but they are not required by the State to run them. Now, to answer this gentlemen's questions, I have here a list of all the day-care licensing units from New York City which requires, I'd say it's 1, 2, 3, 4, 5, 6 1/2 pages of requirements from Social Services in order to achieve the licensing required agencies, a very rigid process. I think the Board is very well aware that day-care centers and the need for very good day-care centers did not come to light until probably the mid 70's, when there was a big scandal in California involving a day-care program and child sexual abuse and other abuses that were going on.

MR. TORLEY: That were alleged to have gone on.

MR. DOWD: Actually, they were found not guilty but after since 1976, or thereabout, many of the states, if not all of the states, have gone on record and have

passed legislation to control the kinds of people that work in those kinds of programs, check them all out and make sure that they are so well regulated so these kinds of things cannot happen again. Those regulations are what my client has to go through to get the necessary licensing. She's got to make sure she's got a very secure facility, properly certified program, properly certified staff members and all of the requirements that any other miscellaneous requirements that the State Social Services requires. They look at the building. They look through the entire building. They look at the structure. They look at the program and the staff. They look at Ms. Guglielmi. They look at her Board of Directors. They look at everything in order to get that licensing program so it's not an easy process.

MR. TORLEY: Have they done any of that?

MR. DOWD: Yes, they have. They have had the Fire and Building Inspectors into it. They have gone over a checklist of what needs to be done. All of those required changes to that building will be met through the site plan process in the Planning Board if we get that far. They don't license us, I'm sure, site plan will be very rigorous with this and our clients will comply with all the necessary requirements with this municipality as well as the State Social Services Department. There's never been a doubt in our minds that that will be done.

MR. FENWICK: I'd like to ask what you're actually here for is how does this day-care center that's exactly what it is, fall into the PI criteria of column A? What are you saying this falls under? What are you saying it should be any why?

MR. DOWD: I hope, I believe, you all have a packet of Memorandum of Law and cases that I mailed to you about, just about two weeks ago. Basically, the problem in this situation is New Windsor code does not define a day-care. If you look throughout the entire code and I have been through it many, many times, it's a huge book, as you all know, but there's nothing in there that talks about what a day-care center is, absolutely nothing. The problem with that, this Board now has and faces, knowing what a day-care center is, where can you put a day-care center in this town. There's got to be an appropriate place to put a day care center. Also, depends on how you classify a day-care center.

We wish this Board to consider classification that a day-care center is a professional business. A professional business is a permitted use in the PI zone. The original

appearances before the Planning Board, when we presented this, I believe the Planning Board looked at that matter and they had no problem with the concept of having a day-care center at this particular site.

MR. TORLEY: I don't know as you should say --

MR. DOWD: That was the original feelings of the Planning Board. We came back here for variances and then we got involved in an awful lot of other matters and eventually, we are here for the interpretation that we are here for tonight. I have gone through, at Mr. Lucia's suggestion last time, all of the public hearing minutes and there are about seven of them, back in 1970's when this code was passed. Looking for some clue that someone thought of either day-care center or how to define what a professional business was. And in the minutes of those seven public hearings and I was on Mrs. Townsend's doorstep for quite awhile, there was absolutely nothing in the record to give an indication that anyone even thought of wondering what a professional business was. Certainly, they weren't even thinking of day-care centers. With that absent in the statute, it's now incumbent upon you to give it a meaning. Based upon the law and we'll go into a little more detail, as I proceed in my argument, the kinds of operations of a day-care center, the kinds of people that are going to be staffing it, having an on-call pediatrician and a doctor, a professional, we have a certified kindergarten teacher who again is a licensed professional by the State of New York. The State of New York considers licensed teachers professionals. We have registered nurses and licensed practical nurses. Again, professional, all of them are going to be on staff at this day-care center.

MR. LUCIA: Can I, it's ambiguous who's on call and who's actually on staff and on the premises while the --

MR. DOWD: The pediatrician is the only one that's on call. Licensed practical nurses, the certified kindergarten teacher, all of the associate teachers and the licensed practical nurses are all going to be classified on their staff requirements as nannies, taking care of the young children, 12 weeks to 3 year old children. They are all part of the staff.

MR. LUCIA: The requirement for a teacher was supervisory.

MS. GUGLIELMI: She's teaching in the classroom also responsible for the 3 year olds and 4 year old room staff. She's the direct supervisor as well as teaching 5 year old classroom.

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MR. LUCIA: She's on the premises full-time?

MS. GUGLIELMI: Yes.

MR. LUCIA: How about your nurses?

MS. GUGLIELMI: On premises.

MR. LUCIA: Registered nurses on premises full-time?

MS. GUGLIELMI: Yes.

MR. FINNEGAN: You have registered nurses?

MS. GUGLIELMI: Yes.

MR. LUCIA: Same for any other people you'd classify as professional that would be employed by Wind in the Willows?

MS. GUGLIELMI: Nurse practitioner is there everyday for three hours a day. She's part-time. She's not full-time but she's there everyday for three hours.

MR. LUCIA: Anybody else?

MS. GUGLIELMI: Who are part-time?

MR. LUCIA: Right, who you would consider a professional.

MS. GUGLIELMI: Our assistant director.

MR. LUCIA: Your professional background would be what?

MS. GUGLIELMI: My professional background would be involvement with this day-care center, running and operation, and early childhood development, background in communications.

MR. LUCIA: Do you hold any certifications or licenses for --

MR. GUGLIELMI: Not yet. We are in the process.

MR. LUCIA: You personally as opposed to Wind in the Willows?

MS. GUGLIELMI: No, no.

MR. LUCIA: Any other professionals who would be on staff, either full-time or part-time?

MS. GUGLIELMI: The medical staff and the teaching staff

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that pretty much encompasses our staff and there's close to 25, 20 last count.

MR. DOWD: Twenty-two (22).

MS. GUGLIELMI: Twenty-two (22).

MR. LUCIA: Okay, how many of those would be nurse practitioners?

MR. DOWD: Nurse practitioners, one; pediatrician, one; LPN, one; nursing assistant, three; head teacher, one, which is a certified kindergarten teacher; three teachers who are certified childcare providers.

MS. GUGLIELMI: With a bachelor's degree in early childhood education.

MR. LUCIA: Are they also certified teachers?

MS. GUGLIELMI: No.

MR. DOWD: They are certified childcare providers.

MR. LUCIA: They are not certified teachers?

MS. GUGLIELMI: No. There's only one person who's certified with the State Department of Education.

MR. LUCIA: If, correct me if I missed somebody there, that list you just gave me is of nine people. I think you said there were 22 on staff.

MR. DOWD: That's right, 9 or 10.

MR. LUCIA: I don't count the doctor because he was on-call but this is just people on staff who are on the premises.

MR. DOWD: You want to make that distinction?

MS. GUGLIELMI: You talked about professional people. We have other people.

MR. LUCIA: That's what I'm trying to determine so we have the one on-call doctor, the nine on premises professionals in some capacity or other and the balance of the 22 are nonprofessional staff, is that correct?

MR. DOWD: Well --

MR. LUCIA: Correct me if I am wrong.

MR. DOWD: We want to make the Board understand what we are doing right now, we are going through the word professional as it is ordinarily understood by everyone in this room. Under normal circumstances, doctor, lawyer, engineer, teacher, nurses, things like that.

MR. TORLEY: Teacher.

MR. FINNEGAN: Teacher, you didn't mention teacher in this.

MR. DOWD: I didn't mention teacher. The problem here gentlemen, very simple, when you look at the word professional, again, there are very, ones that come to mind right away. Some of us might not think of a theologian as a professional but I ask you to consider when you define professional, I used Black's Law Dictionary that basically states a vocation or occupation requiring special, usually advanced education and skill, for example, the legal or medical professions. The term originally contemplated only theology, law and medicine but as applications of science and learning art extended to other departments of affairs, other vocations also received the name, which implies professed attainments and special knowledge as distinguished from mere skill.

When you get into the area of early childhood development and childcare, there's no one in that field who would not consider themselves professionals. That's a very specialized field you're dealing with the youngest of infants and you must take care of them and it's, there's a very special skill and training involved and it's our point that this definition in Black's applies to this situation. It may not be the standard idea of what a professional is, lawyer, doctor, nurse, theologian but it's a profession, a very specialized special skilled position and most, if not all of the people who are on that list will be having to do with early childhood development, taking care of very young children. They may be only trainees. They may be in school. They may be learning through the process. But, they'll be attaining the same kind of professional standards as other childcare providers and it is essential that you classify them and they would be highly insulted if you did not, as professionals. I have talked to many of them. If you don't think of them as professionals, they do a very special service and very well and they do it for all the children in the State and country and they are seen nationwide as being professionals. I would ask you to consider that in your definition of what a professional was. I looked in Webster's New Universal

Unabridged Dictionary and it defines profession as a vocation or occupation requiring advanced training in some liberal art or science, and usually involving mental rather than manual work as teaching, engineering, writing etc., especially medicine, law and theology. Would this Board consider a writer a professional? Some of you would and some of you wouldn't. But, by definition here, they would and I'm saying no matter what definition you look at, an expansive definition of what a professional is, as this world, is more sophisticated, words themselves have to take on more meaning. The word professional means childcare providers.

To give you an idea of how practically this expansive definition has taken place within the legal framework, I gave you the case of Taylor vs. Foley, 2d Dept. case, that's the Appellate Division, which has jurisdiction over Orange County and Brooklyn, Queens, Staten Island and this area of the New York State. And in this case, the issue before the courts was whether or not a drug abuse counseling center was a professional office. So, that it would be able to be allowed, to be permitted to be used in a particular zone in the Town of Greenburgh and very interestingly, the Court said that the kinds of people that were working here, not all of those people in the drug counseling center were professional by any definition. People who sweep the floors and people who work in the kitchen but when you look at the composition of the people working there, professional, and what they call para-professionals, social workers, psychologist, psychiatrist helping people kicking the drug habit, stay off the drug habit. They consider that a profession and the Court sustained them.

Now, again, drawing comparisons to this particular instance, we are not a drug counseling, maybe you would prefer a drug counseling, I don't know, so but here you have children, you have the same kinds of professionals and para-professionals working in a field, in a service oriented type of work. The same type of, I believe anyway, that the Court, the 2d Dept. in this case, this State has spoken which governs the lower courts in Orange County, I would tell you that this is the kind of definition of professional that the courts would go with. They'd enjoy interpreting it this way. They have to interpret it as a profession, in the Supreme Court Orange County. I'm telling you direct parallels are here in the case law that say that this is a professional business.

MR. LUCIA: If I can get you to focus in, for a moment, one of the other grounds underlying that decision was

that this is a counseling center in the courts, of what was professional, you might have to consider the time that a client, patient, whatever spends with the professional. Typically, in your classic professions, if your patients go to a doctor, you spend a limited amount of time being examined. If you're going to a lawyer, accountant, an engineer, whatever you spend a limited amount of time, you can get counseled, advised. If you take it to the home professional office definition, which is where I assume you're going, if you're going for ballet instruction, you spend some limited amount of time with the professional receiving instructions or counseling or guidance. How do you square if an idea of professional in the counseling sense being there for limited periods of time with day-care which obviously is a much more expansive time period.

MR. DOWD: I would dare say anyone, anybody takes care of a child, especially a young child, they are constantly counseling. Parents counsel all the time, whether it's in the sense of a psychologist, you're always guiding the children towards doing good or bad or whatever. You're counseling them. Obviously, the youngest children 12 week old infants, they'll be constantly cared for by professionals. The youngest children will have the most care by the professional. Only when you get to the older care, which they have less care but they'll have significant contact with the professionals. I don't think that because you spend half your time with professionals makes any less professional anymore professional. They are there, they are on-site. They are constantly counseling, teaching and introducing children to new things and taking care of them.

MR. LUCIA: Just relating to this, our discussion, how many of the staff are professionals and how many are not professionals? I suppose it may come back down to how much time they are spending with the professional, is day-care taken as a whole primarily a professional activity or does it involve professionals, when the children are spending their time with nonprofessional people.

MR. DOWD: That's a very fine distinction. I doubt that any court in the State would follow that.

MR. TORLEY: Why should we not, if you're asking for us to consider this to be a professional office, professional business, you're offering an activity that may be regulated under the Department of Education but need not. It may be but need not be.

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MR. DOWD: That's where you're wrong. The primary focus of this particular program is day-care.

MR. TORLEY: But primary focus is day-care, not education and not profession.

MR. DOWD: That's right.

MR. TORLEY: But you're saying day-care constitutes a professional activity.

MR. DOWD: That's right.

MS. GUGLIELMI: Only the kindergarten comes into the jurisdiction.

MR. TORLEY: The kindergarten activity could be, if you chose, certified, under the --

MR. DOWD: Because just if you decide to certify the kindergarten class that you're going to be using there, doesn't mean you can just ignore social services. Social services is the primary licensing agency for day-care center. They are the ones we are going to have to comply with.

MR. TORLEY: You could, if you chose, certify the kindergarten program, under the Department of Education but in the zoning, there's not a clear definition, halfway clear definition of professional business in our code. We do have designation areas for schools which are regulated by the Department of Education, so part of your activity could be regulated by the Department of Education. Therefore, it could be a school.

MR. DWOD: It could be but it is not. And it's not intended to be by this particular applicant. Day-care providers would not, I don't believe, be certified in programs for education.

MR. TORLEY: You're choosing to have an activity. If you choose this one direction, you could be a school or be under the department of regulations. If you could choose to certify part of your program, as a kindergarten and therefore be governed by the Department of Education protocols, okay, if you had chosen that route, the Board, why not should the Board then consider it as a school at least part of your activity as a school? You're choosing to say it's professional business rather than choosing to say school. We have definitions of school. We have no definitions of professional business. If you're asking us to interpret the activity as professional

business, convince me why it does not more closely fit the code as the school in the general definition of what people think of schools.

MR. DOWD: I'm sure this Board has seen many kinds of businesses, if you wish, many kinds of activities in particular places that from applicants that have multiple or dual roles, so to speak, different activities. You might have manufacturing but you also may have administrative offices. Just because he has manufacturing that's 50% of the job, you're going to classify as manufacturing, not as administration? What we're talking about here again of 74 children or thereabouts, that we intend to have in the program, only about 12 maybe even qualify for kindergarten program. As far as age group is concerned everyone else is going to be much younger than that. You're not going to see a 12 week old going to any kind of a school or 3 year old going to a school. The bulk of the activity is day-care. By definition, day-care is entirely different from school. Almost all day-care have some sort of educational parts of programs. But, that's a very small part of this program. This program goes well beyond a kindergarten program.

MR. TORLEY: You also mentioned one question with the first through sixth graders that would be involved in the latch key program after school. Would they also be arriving and departing from your school or they go straight to the school?

MS. GUGLIELMI: I'm sorry?

MR. TORLEY: Is your intention that the children be dropped off at your place and picked up there to go to school?

MS. GUGLIELMI: There's a very small before school program for those parents that have to leave very early and would not no longer like to leave the children at home to catch the bus. That opening is only for 15 children. And that's something that's still under research. To see how parents can adjust to that, our hours are at 6:00 to allow for that. Okay, now there are a lot of parents that work in Manhattan and they have to be there that live in New Windsor and Orange County and it's unfortunate, there are a lot of children that are left alone to have breakfast and to get the bus and to get to school on time. So, with that in mind, that small before school and then the after school is basically separate. More than likely, those two are with the before school program will probably be the same percentage but then if you have to be to work that early, you get off a little early, more

than likely so it may not be the same children.

MR. FENWICK: Before we got any further, I'd like to address something to our attorney. Are we overstepping our bounds if we were to say that this day-care center is in fact a professional business, since the day-care center in several pieces of the evidence that Mr. Dowd presented to us, always call it a day-care center. There apparently is a definition of a day-care center, a day-care center is an entity like a gas station, like an elementary school, whatever. They have, that's what it is. It has been defined somewhere in the law. Are we overstepping the bounds if we do that? Another alternative to that is another way can we look at this is what the applicant is putting before us forgetting the word day-care center, is what the applicant putting before us a professional business. Looking at it this way, forgetting the words day-care center at all and saying what you are bringing before us is should we declare this as a day-care center or should we declare this as a professional business, forgetting the words day-care center because if we leave the words day-care center in, are we going to write the laws for New Windsor. We cannot do that. We can interpret each case and see if it's in fact a professional business. That's the way I'm looking at it right now.

MR. DOWD: I would suggest no matter what happens here tonight, that the Board perfectly should address to the Town Board an idea of perhaps defining day-care center and putting it in.

MR. FENWICK: That's already been sent over there and I'm not going to go any further.

MR. DOWD: I believe that's a very good point. We are saying you do have the opportunity here to interpret. That's your job to interpret the zoning code as it exists. We're not asking you to create any special use, any special definition of something called a day-care center and stick it someplace in the code. I'm not asking you to use your existing code. I'm trying to tell you that that day-care center as we're describing to you, is a professional business and that you can define it as such. You can say a professional business means this particular kind of activity for this particular case. Other day-care centers may come before you and they may not be able to show you that they are not professional business, for whatever reason they may not be the kind of professional we have or program we have. This particular case, professional business

describes this particular activity.

MR. FENWICK: I'd like to hear that from the attorney.

MR. LUCIA: I agree wholeheartedly with Mr. Dowd, when he says we are bound to interpret the strict letter of the code. We have, we cannot make law. And to that end, I would ask if you look at or share with somebody the table of use bulk regulations for the planned industrial PI zone because I think we have to go back to the --

MR. KONKOL: This is what I'd like to know, where he is.

MR. LUCIA: If you have that in front of you, if you look at column A, use 1, this relays the point that Mr. Konkol made, let's read item 1, uses permitted by right and have professional business executive and administrative offices and buildings. Let's analyze that for a minute. What's permitted there? I think if you look at it, what's permitted is offices and buildings. The three things that modify offices and buildings are professional businesses, executive and administrative. They refer to a type of office or building. Okay, there's nothing, I don't believe and this Board has the ultimate answer on this, and attempt to define professional business independently as a permitted use in the PI zone. If you want to just take a look at some of the other numbers on that, if you contrast it with items 2 and 3, businesses are the permitted use in items 2 and 3, if they meet certain criteria that are spelled out there. If you drop down to item 14, office buildings are the permitted use. So I think you have firstly have to look at the exactly what it is that table of use bulk regulation defines as permitted uses. We have heard a lot of arguments on what a professional business is. Mr. Dowd has spent a considerable amount of time defining professional business but I'm not sure that's an issue that this Board is going to reach under the strict interpretation of this code. We are bound to interpret the code that the Town Board has passed. We can't rewrite the law and if what's permitted are offices and buildings, of a type that are either professional businesses, executive, administrative, then maybe Mr. Dowd has to make a different showing than what he's done so far. Maybe he will before he's through. I don't mean to cut him short. But, to go very basically to the answers to your questions, I think we have to interpret the black letter of what's there, whether or not you know this is an instrument of social policy or whether or not Social Services Law declares certain policies to be the law of the State of New York is not entirely the answer here. That's kind of a shortcut to the answer the applicant wants. We're bound to interpret what's in this code.

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If the Town Board has not provided for something that the legislature says they should, then the Town Board probably is the appropriate body to remedy that oversight in the code. We cannot remedy it for them. So, to answer your question, I would suggest the Board look at the black letter of that and be guided by their own feelings of how that should be interpreted.

MR. KONKOL: That was the question I raised last meeting, Dan, and I was going to ask you, Mr. Dowd, to point out in the ordinances where the professional business is permitted and why is it the right of your client.

MR. DOWD: Okay, before I answer that question, is there any doubt in this Board's mind that this is a business? Before I go through that whole argument.

MR. TORLEY: A business is defined.

MR. DOWD: Defined in the Memorandum of Law.

MR. TORLEY: In the broadest possible terms.

MR. DOWD: A business, is there any question that this is a business? If there is, let me address it now and I can answer your questions.

MR. FENWICK: It's a business, yes, definitely, I would say it is a business.

MR. DOWD: Now, when I look at this permitted use schedule, it says professional business, executive, administrative offices and buildings. It's my interpretation as a lawyer, and I would ask you to make the same interpretation, obviously is that professional business, is one use and that executive and administrative offices and buildings is the second use in there.

MR. KONKOL: I disagree with that.

MR. DOWD: You're certainly entitled to that, okay.

MR. LUCIA: If I could just interject there and I understand the reasoning. Wouldn't professional business if that was the case to be consistent, be plural because in items two and three of column A it's businesses. If that were what the Town Board meant, would they have not have said in item one professional businesses then executive, administrative offices and buildings?

MR. DOWD: Given the fact that the entire area of day-care center and professional business is not defined any-

where in the code, I think that would be highly unlikely that they would think of a distinction, that kind of distinction so technical that I don't think it would hold water in any court of law. Again, professional business has a meaning, those words must mean something. What does it mean?

MR. KONKOL: Should have been professional businesses period. It says comma, not period.

MR. DOWD: Not necessarily. Looking at the rest of the list there --

MR. KONKOL: That's your argument, that this is not to the interpretation.

MR. DOWD: If you look at the rest of the uses in your column, after each one, there's not a period office buildings for editorial research, design development labs, clinics, there's no period in there. There's more than one activity going on in some of those uses, without having a period there.

MR. TORLEY: They're all considered as modifiers of the use.

MR. DOWD: They are all multiple uses.

MR. TORLEY: As Dan pointed out, it's offices and buildings of which you can do xyz in, is there anything else in our bulk regulations for planned industrial that would give you the indication that the Town Board, when it was writing of these codes, had the indication of having large numbers of children in an activity outside of the playground?

MR. DOWD: I was going to say public parks and playgrounds, those encourage many small children. If you can put a public park and playground, obviously it's meant to have children in it. That's totally consistent with the idea of having a day-care center.

MR. FENWICK: Is anyone going to reside here?

MR. DOWD: No.

MR. FENWICK: Okay, that's one of the things --

MR. TORLEY: There's no, nothing related to the home day-care?

MR. DOWD: No.

MR. FENWICK: The reason why I asked several of the, a few of the points you pointed out to us in the evidence, they were residence, people that had to do with homes, residences and something like that, some just I wanted to see if that was in fact the case.

MR. DOWD: There will be no one living on the premises. Therefore, making this in the essence a home professional office which brings me to the argument, last part of my argument on the interpretation is since the code does not define a professional business, does not define day-care center, what can this Board use as a mechanism to try to understand what the Board meant by professional. What the Town Board might have passed, this Board meant by professional, one way of looking at it is looking in the own ordinance and looking at home professional office and the definition of that particular term. And if you look at that definition, it's consistent with the argument that I have been putting forth to you tonight as to what constitutes a professional. It includes teachers, it includes other activities in which special training, special education, special uses are present in a particular, in this case, an applicant's home. This is not a home but again, gives you an idea of what the word professional means, under the Town of New Windsor code. I would ask you to keep that in mind in the interpretation question.

MR. TORLEY: All those are referring to activities currently in a residential zone, not in a planned industrial zone.

MR. DOWD: I'm not arguing that. I'm saying to you --

MR. TORLEY: By your statement, you're asking us to consider this as a day-care center as of right to be in a PI zone.

MR. DOWD: That's right, as a professional business.

MR. TORLEY: Anywhere in a PI zone you can put a day-care center?

MR. DOWD: Anywhere in a PI zone. I'm saying to you day-care center is a professional business belongs in a PI zone by those representations. The issue as to where it should be situated, what kind of facility it should be in, what kind of improvements should be made to the facility are issues before the site plan approval process of the Planning Board. They are going to be the ones

that tell us protect the children from the traffic, bring it up to electrical code, water codes, sewer codes and everything else there. They are the ones we have to jump through the hoops for. They are the ones we have to satisfy that this particular building and site is a proper place for a day-care center and also in the PI zone.

MR. KONKOL: I have a question for you. If we were to interpret it as a professional business, that's a wide open statement, that means any type of business can go into a PI zone. We're changing the law.

MR. LUCIA: Any type of business that could meet similar parameters to what Mr. Dowd is proposing, yes would have an argument based on the precedent to go into the PI zone.

MR. KONKOL: Doesn't have to be a school, as particular, professional painter, professional pig farmer, anything, professional businesses. I think we are misinterpreting that law.

MR. LUCIA: That's essentially is this Board's function is to interpret the law we have in the light of the application that we are presented with and, you know, bearing in mind that any decision you make does set a precedent for this zone that's going to be finding until the Town Board changes the law.

MR. DOWD: There's another point you wish to make to the Board and that's contained in point two of my Memorandum of Law. It's an important point, I believe probably one that may, I hope, will help you make a decision. There's a stated policy in this State to encourage day-care and childcare. And that's stated in Section 410D of the Social Services Law which you all have a copy of as part of your packet. That policy is stated thusly, that there's a serious shortage throughout of the State of New York of facilities suitable for the use for the care of children, especially those of preschool age and primary school age whose parents are unable to provide such care for all or substantial part of the day or postschool day. The absence of adequate day-care and residential childcare facilities is contrary to the interest of the People of the State, is detrimental to the health and welfare of the child and his parents, and prevents the gainful employment of persons, who are otherwise qualified, because of the need to provide such care in their home.

MR. LUCIA: There's a section there that wasn't read and I want to emphasize it. Many such facilities are so

located and when they say many such facilities referring to the day-care centers, are so located that they are not accessible to families in need of such services. I think the Board ought to weigh that statement of policy by the State along with our obvious obligation to protect the health, safety and welfare of the citizens of the Town of New Windsor. This proposal is being located in the planned industrial zone. And the applicant is coming here by way of interpretation. In making that interpretation, you have to have in mind the health, safety and welfare of the children who would be cared for there as well as the health, safety and welfare of the community. I know that you have in the past requested some input from the police and traffic accidents in the area and we have, I guess, Bobby Rogers letter saying that the site plan was disapproved for various fire code reasons. In the light of that State policy, I think you can read all that together is this proposed facility located so that it's being accessible to families in need of such services?

There's no doubt Statewide and within the town, there's a need for services but is this the location upon which this facility should be provided? And that's one of the things I think this Board has to consider.

MR. DOWD: Let me briefly address that and I'll be brief. I believe, if you were to talk to many planners, municipal planners, land developers, that you would find that many times, when you're talking about locating day-care centers, you're talking about putting them in business type zones, as opposed to residential zones. The main reason for that is because it's accessible to the people who need it, when they go to work, they're close by. They drop the children off at the day-care center. They go to work and they don't have to run about, running an hour or two hours to get back before the day-care center closes. They are within the area, the accessibility is within a commercial business type zone. You don't necessarily want it in a residential environment, an exclusive residential section or any kind of residential section. You don't want the noise of children. If you have senior citizens around, they'd be bothered by the children. Now, if you put it in a business section, it has multiple benefits. It keeps it from being annoying to the residents and it keeps it in the area to the people who need it the most, the working class people. I'll be giving you a number of documentation for the record from business people in this area who are, who want to see this open. Business people and not just parents who work but also the business community who want to see this kind of professional business, professional day-care center, come to this area because there's

a tremendous need for it and it gives them a tremendous advantage. People can work, they don't have to worry about the children and the employers don't have to worry about the employees saying I have to leave at 3:00 to get to my child at 5:00 because I have to go across the county. It's right in the business community, accessible.

With that said, let me get back to the State policy and the reason why I make this argument. If you look at the case law, which I showed to you and the cases that are coming down, it is clear that in situations where zoning codes are silent as to things like day-care or childcare or family-care programs, if they have a residence and a mother brings in 5, 6 or 7 children to care for them in their home, in the absence of having those properly zoned or in the absence of conducting that activity in a zone that it's not permitted, the courts have been very, very lenient to the provider, to the day-care provider and the family-care provider. The case laws are pretty clear, gentlemen, that in the absence of a definition or an idea of clearly where a day-care center can be, that the courts come down and say the local Board's must try to follow the State policy for providing day-care. To make it available for the people in the State of New York and the cases that I have given you all say that and they are from all over the State. They are lower court decisions, they are 2d Dept. Appellate Division cases.

In particular, I bring you to Abbott House vs. Village of Tarrytown, which is a boarding home for neglected children, if you read that case, it may not be zoned for that, people don't want neglected children near them. The Court says there's a stated policy of this State to provide for needy children, the care of children and the municipal laws of the local county must not impede that State policy. It's to everyone's benefit to have, to follow that policy, to encourage that policy and those local zoning ordinances, if they are overly restrictive or not even existent at all, should not stand in the way of that stated policy. In every one of the cases I gave you in the packet say that.

MR. FENWICK: For the most part, reading all of them, the towns were at fault time and time again, not the local Zoning Board or whatever. The laws were at fault. So, we're looking at a nonexistent law. We do not have a day-care center spelled out anywheres in our books. We don't have this situation anywheres in our books. Several of those cases happen to be in residential areas. I read through it for the most part, they were in residential areas. I wish there was a definition that

is what I wish there was. I wish we had it in the books. I think if we go on with this thing we're going to be writing the law. I'm not quite sure how I'm going to go with it. I want to hear some evidence or what's going to happen out of the audience. I have a feeling right now is that we have got an ideal situation that your client was able to buy a house. That's this building. If this house happened to be in an OLI zone, you'd be in here arguing that it would be office/light industrial. If you happen to find it in an R-5 zone, you'd be here arguing that it belongs in an R-5. That's the way I feel about it right now. But, time and time again, everytime the local town, the Zoning Board were not found at fault but the local laws were found at fault by neglect or omission and that's where we are at but we're going to proceed but that's what my feelings are.

MR. DOWD: It's precisely the fact that it's missing, okay, that gives this Board an opportunity to do what the courts have said, basically to interpret the zoning laws to allow and to support that stated policy of the State of New York to Section 410-D of the Social Services law.

MR. TORLEY: If we can get back to some of the case law you presented, as Richie mentioned, they primarily are dealing with activities in a residential zone as home day-care and that's not what we're talking about. The only one that you've referred to there is the counseling center. The others were basically general in rural settings for example the one you just referred to, I believe Tarrytown was a residential zone of a group home in a residential zone, essentially irrelevant to the case you're presenting here.

MR. DOWD: I strongly differ with that statement. Again, you have to realize that Mr. Lucia can certainly help you with this, if a court of law were to get this matter, okay, they would look at all of the cases I supplied to you and the Appellate Division 2d Dept. case would be the law for Orange County as that decision was rendered, it would be the law for Orange County. The other cases I have given to you are clearly persuasive authority as to how a particular statute should be interpreted. Each court will look at that before they make a decision. I'd tell you that an Orange County judge would have to look at really just all of his judicial wiles to get around these kinds of cases that I have given you to interpret it any other way.

MR. TORLEY: I'd have to leave that to a judge's decision but in the other case you presented here,

actually the one of the Town of Clarkstown, there again, the statement was basically rural nature for shelter for normal children, which is very close to the day-care center but in that section, they were not permitted in a zone where maintenance of schools was allowed so again, the court was saying if you have a zone where you have other activities, such as schools, then such a group home would be an appropriate use. In these, does it say that a planned industrial, which could be heavy factory, is that an appropriate place for a day-care center?

MR. DOWD: If there was one, I would have found it.

MR. TORLEY: There's no case law that says that a day-care center is appropriate.

MR. DOWD: In a planned industrial zone, not that I could find, not in the State of New York, that I could find. The fact that it's not directly on point that's a fact of life that all of us run into when we're arguing a case and all judges come into that situation, that's when they start looking at these cases to help them make their decision on a particular fact pattern. In this case, the case I have given you is a, there's a stated policy for day-care centers and childcare follow-up.

MR. TORLEY: The question is whether this activity meets the criteria for being of right in a planned industrial zone.

MR. DOWD: That's what we are here for. My advocacy and your ultimate interpretation in that.

MR. TORLEY: Would you help me a little bit in the interpretation as our LChairman said, how far a field does the case law allow the Zoning Board's to go in interpretation because this is actually pretty far a field.

MR. LUCIA: Well, we have a great deal of power, we, meaning you gentlemen as to the Zoning Board of Appeals. Essentially, you sit as a Court of Appeals and in interpreting this, you're trying to interpret what the Town Board meant when they adopted this ordinance. Your decision can't be overturned unless it's arbitrary or capricious or just plain unreasonable. What Mr. Dowd is attempting to present to you, he feels the cases he's presented and the statute he's presented require you to make a finding that this application is a professional day-care center or this applicant's proposed day-care center is a professional business within the meaning of the code. When I backed you up to look at

the strict letter of that, maybe we don't have to answer that issue. Maybe if you view the code as defining as use of permitted right of offices and buildings, then we don't have to touch the issue as to whether or not this a professional business. If we hold to the view that that isn't really what's permitted use in the zone. If professional business merely defines a type of office or building, then all of the argument is off point. If you want to interpret the code as defining a professional business as permitted in a planned industrial zone, then you do have to reach the issue as to whether or not that day-care center in one of those professional business. I think you all have a lot of experience and the Board in the history of this ordinance. You know I would sit back and think about it. Do you think that when the Town Board created this planned industrial zone, they had professional business of this nature in mind. If you have a reasonable basis for saying no, then you can refuse the interpretation that the applicant is requesting. And the recourse the applicant has is to go to the Town Board and say we have a proposal we think is needed in this town, why don't you zone it someplace so we can come in and set it up. There are day-care centers in the town, are there not Mike?

MR. BABCOCK: Yes.

MR. LUCIA: Do you know off hand how many there are in the Town of New Windsor?

MR. BABCOCK: Right now there's two and there's a third one that's opening up now.

MR. LUCIA: Do you happen to know what zone they're in?

MR. BABCOCK: One is on 94, is an NC zone. There's one on 94 also that's in an R-4 zone and there's one down in Clancyville, which is R-4 zone.

MR. TORLEY: We are not specifically referring to how many day-care --

MR. BABCOCK: No, these are day-care centers.

MR. LUCIA: Do you know if they were nonconforming pre-existing, how they got to be there?

MR. BABCOCK: No, I don't. I assume they are nonconforming pre-existing.

MR. LUCIA: Okay.

MR. TORLEY: My question to you really is more directed in interpretation. Obviously, we are trying to essentially read the minds of the Town Board, when it existed 10 years ago. What case law is there that says how far a field obvious interpretation goes, does the Zoning Board of Appeals go?

MR. LUCIA: Basically, your decision must not be arbitrary, must not be capricious and must not be unreasonable. If you can avoid those three pitfalls in deciding this, the court will uphold you but essentially, you need something to hang your hat on and if the Town Board did not in good conscience really consider this, it may be at the time this was, this ordinance was adopted, day-care centers were not a big issue so it's not surprising that Mr. Dowd found these things. It just was not an issue that was considered and if it was something that wasn't considered, we have to sit here and decide how the Town Board considered it, would they have plugged it in here or would they have plugged it someplace else in the ordinance. We can't rewrite the code. We have to interpret what's here.

MR. TORLEY: Or choose to say that no interpretation is possible.

MR. LUCIA: We can decline to interpret the code, as Mr. Dowd is requesting and as long as we have reasons for it, whether or not we are upheld on an appeal is a matter to the courts.

MR. DOWD: And you're making an interpretation, you're saying it's not this, you're not saying what it is. You're saying it's not this.

MR. TORLEY: You see my problem is that --

MR. LUCIA: I see your problem very well.

MR. TORLEY: I ask the attorney if you make the case that says if we have no information that would allow us to say this is what the Town Board meant, you're asking us to write new law.

MR. DOWD: Absolutely not.

MR. TORLEY: By saying this is the plan that a professional day-care center is permitted by right in the PI zone.

MR. DOWD: What I'm saying to you and I've been trying to say all along and Dan understands what I'm trying to say here. We're not asking you to write, rewrite the

code. we're asking you to do the job that the Zoning Board of Appeals has to interpret the code that exists. Now, I'm not saying it's an easy job by any means. I work Zoning Boards myself, it's not an easy job sometimes and this is an interesting issue. The question here is are you going to basically buy my argument, my client's argument that that's professional business as of right belongs in a PI zone. You're being handed as much documentation as I can hand you and as many arguments that I can possibly think of to persuade you to that and it's ultimately going to be your choice, yes it is or no it's not. But, by saying yes it is, you're not rewriting the code, Not at all. You're doing what your job was, to interpret the existing code. You interpret it this way, who's to say you're wrong. Town Board can't complain, they didn't say anything about it.

MR. TORLEY: I do want to thank you for providing us with the actual copies.

MR. DOWD: I don't know how you want to go about this.

MR. FENWICK: I'd like to just stay with this because it will depend on whether we are going to address the next argument or not.

MR. DOWD: I have some handouts for you. Additional handouts, I'm going to throw everything at you, including the kitchen sink, if I can. When I told you about the State policy of New York State day-care centers, I think one of the things you should see are your elected representatives' positions on Wind in the Willow, Inc. And this particular day-care center. I have here for each of you, is a news flash basically from Assemblyman John Bonacic and Assemblywoman Nancy Calhoun concerning a grant that was given to this Wind in the Willows for this project. One hundred thirty-four thousand dollar (\$134,000) grant, loan, I'm sorry, loan, take back grant, put in loan, big difference, that's right a big difference and in that statement by Assemblyman Bonacic and Assemblywoman Calhoun, it expresses support of the Wind in the Willows Day-Care Center. And obviously, the State is behind this, if they're willing to lend \$134,000 to this particular program and this particular building.

I also have for you gentlemen a letter from Assemblyman William Larkin, who has taken the time to look at the program in the Wind in the Willows and has been kind enough to write a letter of support for the program and lastly, I have a letter from the County Executive, Mary McPhillips also expressing an interest in the day-care

center and day-care in general for Orange County. Which I'd ask all of these be part of the record. I then have a letter from a Denyse Varinno, Human Development Agent for the Cornell Cooperative Extension who's urging this Board to recognize the Wind in the Willows Childcare or Day-Care Center as a professional business so that this program can be, can get underway and provide the vital service that is so much needed in the county. And aside from the politicians, I have businessmen, I have a letter here from Hudson Valley Tree, Inc., which shows you I think that area of businesses this one being in Newburgh, again looks to the need for a day-care center in this area and would be and would have direct need for their employees for Wind in the Willows. I have a letter here from Peter Stephan, Director of Human Resources for MacBeth, who's expressed their support and their view that proper childcare is needed in the community. And they look forward to Wind in the Willows beginning the business of a day-care center in the area. And I have a letter here from Beginnings Unlimited, Inc. which is basically an Albany based company. However, it talks about Golub Corporation, which is one of your local businesses.

MS. GUGLIELMI: Golub Corporation is Price Chopper.

MR. DOWD: And addressing the same issues of support for this operation. I have a letter from Dorothy Naylor, who is in the audience tonight of the United Way. I don't have eight copies. I ask one be put in the record and ask if you want me to read this into the record, I will or just pass it around to your members and let them look at that. I have the one copy I gave to the Reporter and one I gave to the Board and at this juncture, Mr. Chairman, I think I have --

MR. FENWICK: I'd like to say something in reference to this. I have been contacted at work by a Mr. Darling from Albany. This is like a chicken in every pot, fantastic idea. I spoke to him and he has no idea where the site was, no idea what the building is all about or anything and I have got a feeling that's probably 90% of these letters. It's a great idea. There isn't a person on this Board that object to the idea. Are these people familiar with what's before our Board?

MR. DOWD: If you look at Mr., Senator Larkin's letter, he's specifically has looked at the plan. He says so in his letter.

MR. FENWICK: Plans are great, you know I'm just --

MR. DOWD: Again, Mr. Chairman, I'm not going to be here before this Board saying that there are not things that have to be done to that building. The appropriate place to address those and we'll certainly address those, if you give us the opportunity is the Planning Board. Every single issue that you are concerned about, my client is concerned about. She's concerned about the children she's got to take care of, not only because of the liability aspect but more importantly, they are going to be like her children. She's responsible for them. The parents trust her. She cares about the children. She's not going to put them in a firetrap. She's not going to let them run out onto 9W. It's going to be a well organized, well run, well kept day-care center and if we can't meet the Planning Board's approvals, we're not going to get this operation going. If we can't meet State which is probably more rigorous than the site plan approval of New Windsor, we're not going to get this thing opened. We'll address those at the appropriate forum and we have to answer to more than one authority on that and that's my client's position. They'll be addressed satisfactorily.

MR. TORLEY: Mr. Larkin's letter said that he had the opportunity to see the proposed site, not the site plans.

MR. DOWD: Did he see the plan?

MS. GUGLIELMI: Yes, he did,

MR. FENWICK: That's neither here nor there. We have a letter in front of us that he has seen this. Any other comments or questions from the Members of the Board before I open it to the public?

MR. LUCIA: Before we do that, I just want to explore with you for a moment the extent of State pre-emption. Social Services Law 398 seem to pre-empt the issue for how many day-care centers that were probably in agreement on that. Do you feel that Social Services 410-d similarly pre-empts the field in commercial day-care facilities?

MR. DOWD: 410-d, that's the one I referred to.

MR. LUCIA: You felt pre-emption of 410-d is as extensive as 390-A?

MR. DOWD: It's a stated policy and it pre-empts the local municipality in any judgment, all the regulations and rules about these kinds of day-care centers as opposed to the home are all regulated. I gave you copies

of all the hoops she's got to go through to get licensed. That's the ultimate goal. That's the most challenging thing is to meet those criteria to get the license.

MR. LUCIA: The extent of it is real important to where we are going here. The last year's Town of Clarkstown case pretty clearly established the 390-A pre-emption on home day-care. Do you know of a case that's as strong for commercial day-care under 410-d?

MR. DOWD: If I found it, you'd have it. Again, because of the interpretation on 390-A, it's my position that should this kind of a case come on this kind of a program come before a court in this State, that that case, the Clarkstown case as well as the other cases are going to show us that 410 is pre-empted, is just as pre-empted as 390-A.

MR. LUCIA: I understand that's your feeling. I'm wondering if the Courts aren't going to allow Zoning Boards or Town Boards in redrafting the ordinance to consider environmental impact issues on the commercial unit. You know, one of the issues this Board has from the outset been real concerned with is health, safety and welfare. If you're going to put a day-care center someplace in the town, are you going to put it in a planned industrial zone? I'm not sure that they would nor am I sure that this Board in interpreting necessarily has to reach that. If 410-d is really less extensive than 390-A, maybe that's something they can hang their hat on. That case until now hasn't come along, I don't think.

MR. DOWD: If it was out there, all the people I spoke to in the field as well as, you know, the municipal planners and my own research, if it was there, I would have found it. I don't know where it is.

MR. TORLEY: How about the research, are there any cases where a town zoning code that says commercial day-care centers are permitted in this zone but not in PI zone, have they ever come to trial, are you aware of any? The question is, have any cases, the reverse where a 410, a Town Board had written proper zoning codes, a day-care center is permitted in an R-4 but not in a PI?

MR. FENWICK: Do you actually think Mr. Dowd would bring something like that in here?

MR. LUCIA: He's been pretty candid.

MR. TORLEY: I think if he's aware of that, he'd have to respond.

MR. DOWD: I'd just like you're almost like Court, I'd have to be honest as I would be in court. If there was a case on point in this particular matter, I wouldn't be here making the argument, nor would my firm. We are not here to pull anything over your eyes. The reputation of my firm and myself as an attorney, I would make that kind of representation to you, if I knew it wasn't true.

MR. FENWICK: Anything else that we'd like to bring up? Okay, I'd like to topen this up to the public at this time. I'll ask you to raise your hand. When you're recognized to please stand, give your name and address. The thing I ask you to do is to listen to the person that spoke before you. Try not to be repetitious, We'll be here all night. Please address the situation that we're against right now and which is an interpretation that this is in fact it does belong in a PI, planned industrial, zone. That's all we're concerned with. We know there's a need, there's no doubt about it. You can be here all day long telling us about the need. We know that. We're not sure the thing that's before this Board is this need in this zone.

RICHARD HYAMS: Good evening, I'm Richard Hyams, I live at 1169 Washington Green. My wife and I purchased one of the codos there about a year and a half ago and I'm not going to bore you with the need of it. We're really stuck, we're really stuck with no day-care centers since I'm the first one I can say a little bit with some places, were totally not up to par. There are a couple places that are unlicensed that are available with space but we wouldn't deal with any of those. We do have the only place in the area that we would consider is the Butter Hill Day-Care and we're first. We'll have a space there in the springtime of next year. Okay, so we're really, you know, in a bad way about this. But, then as far as we're talking, you know, I kind of, I was jotting down some things here. One of the things just like why the argument of this being a professional business is kind of that seems kind of silly when, you know, you're talking about we consider teachers professionals but well, you were talking about we sit with somebody for a doctor for 15 minutes, a lawyer for an hour, this person for an hour, don't we got to school for all day? When we do that --

MR. FENWICK: The reason why before you go any further, the reason why that's a question we have specific standards and it's recognized in our zoning book, schools, high schools, trade schools, vocational schools, schools that are other than either one of those items, we

do have schools.

MR. HYAMS: And the counseling --

MR. FENWICK: And we have zones for those schools so that's the reason why several members on this Board have questioned as to whether this is in fact a school. Okay, if it winds up being a school, we have a place for it and it's not planned industrial.

MR. HYAMS: Unfortunately, the places are, there's enough people breaking down doors to open them up and my wife and I are in a real hard position because of it. But then, the next thing we had was the counseling aspect of it. You know, from right now, my baby is just two years old but and, you know, still, she learns all her interpersonal relationship and are those considered something we learn in school under that definition or something we learn by counseling different types of teaching, something that she's planning to offer in this school. The only other school within any kind of distance from here is the one Montessori School in Highland Falls and that's just a big trek and only open for three hours a day and doesn't offer the kind of hours that she's offering, which no day-care center in New Windsor offers anywhere near. Butter Hill is from 7:00 till 5:00 in the evening. She's until quarter to seven in the evening and starts at six in the morning and a couple of you know that's for me that makes a real big difference. They took the second definition before they got my profession in there, I don't understand what the argument is. Again, with the professional, the counseling that the different type of teaching that she's talking about, which is part of a day-care but I just want to say I have never met her before this evening or anything like that. I came here, my wife had a problem with a babysitter. We're trying to get a babysitter. That's why I'm here, not my wife. My wife had even more things to speak about than I did. But, the big thing that she's with the teaching aspect that we are not going to call a school is something else that a child, a two year old, an infant needs to learn with interpersonal relationships and things about talking about like raising a garden and stuff like that. There's a lot of responsible things a three year old learns, they need to water the plants and stuff like this and caring for things and things that aren't defined in school or counseling which, and putting them under, they're somewhere in between there and they are definitely in between there and since they are, they constitute a profession as far as and you were talking about the numbers of people that were in here and stuff, profession, somebody who's painting a house or

something like that or siding or roofing a house, if you get paid for what you're doing, you're doing it professionally. That's not the definition of profession that we're looking for here. Definition of professional is if we by consensus is something that you have been educated and trained to do beyond secondary school. That's basically seems that 80% at least of the staff from what I heard here is at least got an associate's if not graduate degrees. I don't think there's a question and the childcare provider degree, a childcare provider where are we putting that? That doesn't fit under teacher and it doesn't fit under counselor. Okay, but yet it's a professional position. I don't see any question in the world about that being a professional position. As far as where the place is located, it's located, I live down in Washington Green, everybody knows where that is, I'm sure. It's going to take me three minutes to get out of my way going there. My wife is on her way going to the Newburgh Beacon Bridge. That's her really perfect.

As far as questions about traffic accidents, I heard somebody mentioning something about traffic accidents. I think that the place is probably going to have a fenced in yard, kids probably aren't going to be able to cross the street and stuff.

MR. FENWICK: That wasn't the question that our Board was investigating. It's because of due to increased traffic that's what this is about.

MR. HYAMS: I understand that.

MR. FENWICK: You have not been here for five meetings, this is the fifth meeting and one of the things we had asked the Police Chief to address was accidents and traffic flow in there and in that area.

MR. HYAMS: I understand that completely. Okay, I understand.

MR. FENWICK: I don't want to get away from that or where the concern for the children is is more or less a traffic flow and we have a right in the book to address that and we have.

MR. HYAMS: I thought it was cars driving up on the sidewalk and running through the school. But, that's obviously you need to do that. Okay, and then that's all that I think I wanted to say. I wanted to say more but specific places, Patty's Playhouse, we went into Patty's Playhouse and she, we wouldn't leave our daughter

there. That's the other licensed place in New Windsor, Patty's Playhouse, Butter Hill and there was another one that we're on their waiting list too but that's farther ahead even then Butter Hill. We have a better chance of getting into Butter Hill. I was unaware of how long this has to go. It seems that I'm going to be in Butter Hill next spring even if you guys do great before I'll get into there. Just doesn't seem to be real expeditious.

RITA CAFFARO: My name is Rita Caffaro and I'm a homeowner in New Windsor. I'm a concerned parent. I'm also, I work for Cornell Cooperative Extension, Orange County. I am a 4-H Staff Representative. I'm the Executive Director of the program in the City of Newburgh which is Youths at Risk.

I'm here tonight in support of this professional day-care center that we are trying to get going in New Windsor. As you know, there's a need. I don't have to go into that. Working in the City of Newburgh, I see I have the opportunity to go into latch key programs and I know that they are not professionals that are running these programs. And we do definitely have a tremendous need to have professional day-care centers where we can send our children to, know that they are safe and I feel at this point, because this is a professional day-care center, that there's no reason why it shouldn't be allowed to be placed in an industrial zone. People definitely need to have places near where they work. This would be a great opportunity for many people. I hope that you do consider allowing this professional business to be established in this area for the need for the children and definitely for the professionalism that's involved. Thank you.

MR. FENWICK: Anyone else?

BILL TRIMBLE: My name is Bill Trimble and I'm Director of Economic Development for the Eastern Orange County Chamber of Commerce. I'm here this evening to support this program for Wind in the Willows and again, I'll try to avoid that need word as much as possible.

Eastern Orange County Chamber of Commerce representatives are in excess of 1700 businesses in the Hudson Valley area and on a day to day basis, we get constant inquiries as to what's available professional day-care centers are here in Orange County. This program I'm personally familiar with because, as also representative of N.A.I.D., Newburgh Area Industrial Development, we have acted as a

vehicle for the application that went into New York State for the funding of this program. Again, once again, I should say as far as need goes, there's no question about it. As far as the problem we have here as far as your interpretation as to professional, I think that if the dictionary probably was updated, this type of service would come under professional. Each and every day of our life, everything changes as far as what we in the past have called one thing today, it takes on a totally different meaning. This here with the interpretation of professional, there's no question whatsoever these are highly qualified people that are going to be in place here and I believe New Windsor, on a day to day basis, I represent going out trying to find and also assist existing businesses here to bring them in as well as to help any of those that you have presently here to expand. There's no question whatsoever as to a need for this type of service. Thank you.

DOROTHY NAYLOR: My name is Dorothy Naylor and I wrote you all the letter from United Way of Orange County. I apologize for insufficient copies. I know the need but that's not what I'm here to talk about. I want to talk about professionalism. Day-care centers go through a lot of licensing, a lot of inspections and it's not just at the beginning but they'll be repeatedly inspected and if they are not up to par, they can be sanctioned and they not be allowed to continue to operate. We currently work or fund nine nonprofit agencies in the county that provide day-care. We consider all of their directors and a good part of their staff professional because it takes a professional to deal with the children, to work with them. They are the parent for a large part of these childrens' lives. In fact, in some cases, the children may see these people as much as they see their families and if they are not professionals, they will not know how to provide the socialization and nurturing that these children need.

I have seen the documents that they have prepared and I have been talking to Ms. Guglielmi for a couple years now off and on and she's been trying to get this established and she has a plan. She has looked at it. She's looked at the needs of the children, the needs of the staffing, what the parents need to know and I think that there can be no question but that this is a professional business and it's something that the children drastically need. Thank you.

JOAN AUGELLO: My name is Joan Augello I live at 34 Commonwealth Avenue, I'm the Director of Childcare County of Orange located at 11 Bennett Street, Middletown, New York. Our resource and referral service last year

answered 770 requests for childcare for parents throughout Orange County, about 40% of those parents were from the Newburgh area. About 60% were from parents looking for infants and toddler care so there certainly is a need for it. I also represent childcare professionals, a whole profession of early childhood educators who have devoted their lives to this early phase of human development and only now are we beginning to recognize how important those very early years are. So many areas of our society seem to be crumbling and now we're once again looking at those early childhood years and the importance of reliable, dependable trained staff is so crucial and it's going to effect our communities in the future so I do represent a body of early childhood professionals.

Also, I sit on a Business Dependent Care Task Force which includes businesses and dependent care providers that would be providers for the very young and the elderly in our society and there's a need to work with businesses to adapt our society to help our employees care for their dependent family members. In view of this, I really urge you to consider these changing demographics in the work force and that our communities are in the future are going to need professional programs that are going to help our employees help our businesses care for, allow our families to work as well as care for their employees. I think we need to start thinking of childcare as being part of the infrastructure of our communities, we need roads, we need sewers, we need the water systems and we need quality professional programs to care for our children because that's the first step to our new citizens.

In addition, I'd like to share with you a report that was done by the Rockland Planning Office, which was done to helpitalize the Rockland County Business Community by trying to include my childcare centers and make childcare be more available in their communities. And after extensive research and a pretty significant bibliography, the model zoning code suggested that there was some limitation for childcare centers in residential areas and in single family and two-family residential areas but their recommendations are that in all other zoning districts, that a childcare center is permitted by right in all other zoning districts, subject to the following conditions. One, State licensing standards and requirements are met. And as we have talked before, they are very extensive. The rules and regulations by the Department of Social Services. Number 2, is setbacks, screening and landscaping shall conform to the permanent portions of the zoning code which is something that can

be handled on a local level. Number 3, structures shall meet building, sanitary, health, traffic, safety and fire safety code requirements. That's another local issue. A minimum of one off street parking space shall be provided for each employee plus off street. Well, that's parking. And number 5, filing of a childcare registration form with the town or village. I think the important thing is like the gentleman in front was saying that as long as certain conditions can be met, that childcare programs are so regulated that they should be available in all our zoning districts. I have a copy of this, if you'd like.

MR. LUCIA: Do you have a date on the proposed code?

MRS. AUGELLO: I think it's after the Clarkstown decision because I know there have been, there's a new State law regarding it, it's June 1990. In light of the changing demographics, and the families who are living in New Windsor, where it's so imperative now where there be two income families, we need to look to ways where we can support our residents, support our families and really make sure that our children are getting the best kind of care possible so I urge you to be very open as you consider these regulations.

NANCY LOPES: My name is Nancy Lopes and I'm Educational Director of Day-care Center in the County. We have had day-care centers for eight years and we have been located --

MR. FENWICK: Whereabouts in the county?

MRS. LOPES: In Monroe, New York. We have had a day-care center for eight years, five of which were in an industrial area and three of which are now in a residential area. And being in both, what we did is we found the need in the community. And the need in the community at the time was industrial area, that's where, why we're located there. I'm sure Ms. Guglielmi has taken on the need of the community and found where the need is greatest, where the residents need the day-care center, where the day-care center should be located.

MR. LUCIA: Was that by permitted use or how did you get into --

MRS. LOPES: Both by permitted use.

MR. FENWICK: Before we go any further, I'd like to ask you if you're going to speak, have you in fact signed the roster? I'm going to skip over you, the gentleman

behind who has, I'll allow them to speak. I saw another hand up in between the gentleman or, okay, if you in fact have signed it, I'll let you speak and then these people can sign it.

JOHN TURNER: My name is John Turner, my wife and her brothers are the owners of the residence. I'd like to give you a little background, since we have owned the house and give you a little idea of what was there prior to us purchasing the house. Prior to us purchasing the house --

MR. LUCIA: Are you referring to the property which is the subject of this application that's the estate of Geraldine Carfaro (phonetic)?

MR. TURNER: Yes. Basically, what was in there before we bought the house was prostitutes. I'll be honest with you. When we had to go in, all kidding aside, when we bought the house and we, our original purchase of the house was to make it into an elderly rooming house but due to the death of Geraldine Carfaro, my mother-in-law, who was one of the other major partners in this, we made an assessment for the house to be sold. Probably, if it wasn't for that, we'd be standing here instead of this young lady trying to get a variance for an elderly home there. We spent a tremendous amount of money, hours, fixing it up. We put a lot of money into a new heating system and other improvements. What I'm trying to say is what was there before that or before we purchased the house was just a, like I said, it was a rooming house and for anybody that really wanted to live there. There were people living there that didn't have jobs, were on public assistance and there was nobody there regulating that. Like I say, there was prostitutes living in there. Believe me when I had to go in there and take some of the things out of there, like bathrooms and such, some of the things I found in there weren't exactly things that I wanted to touch. So, what I'm trying to say is that prior to all this, and our reason for buying the house, we wouldn't even be, it wouldn't be this lady, I would be here right now if it wasn't for the death of my mother-in-law. So, my real reason for telling you this is just the fact what was there before wasn't regulated by anybody and nobody knew what was going on there so I think as a parent, and having a young daughter in childcare, which I, is in a private house, not regulated by any State agency, which it took me a long time to find somebody that I trusted and they are not certified. I think that given a chance, professional, I agree with these people, it's a professional business. Thank you.

MIRA RUMSEY: My name is Mira Rumsey and I own a house at 23 Ledyard Street. I'd like to address the word need a little differently. I'd like to know what would happen if this woman needs \$134,000 in order to convert this over to a day-care center, I know this house is in very poor condition, unless John Turner did a lot of work to it. I was going to try to buy this house a year and a half ago. And I was lucky to get out of the deal because of a loophole because I knew that this was going to require more money that I would possibly afford to be within the code of PI industrial and I would just like to know what her back up plan is if she can't afford to actually make this a day-care center, which yes, is definitely needed by the community. As a mother, I totally agree with everybody and what they are saying. I questioned had they been in the house, do they know what it looks like inside, unless a lot of work has been done to bring it up to the code, electric, plumbing, different things like that, in order to make this for a day-care center so people aren't afraid to leave their children.

MR. FENWICK: Just by hearsay, I'm sure you know what's in there already.

MS. GUGLIELMI: Can I just address her financial situation?

MR. FENWICK: I don't think I'm going to cross you off but I don't think that's what's before this Board right now.

LISA TURNER: My name is Lisa Turner and I'm just going to be upset because Mira tried to buy the house and what happened my brother moved to Rhode Island and the pipes froze up and she tried to get me to come down this huge amount on the price of the house and I didn't go for it per my attorney, Peter Bloom and she screwed me over for like six months holding me up and that's the reason she's here because she's wanted this house for years.

MR. FENWICK: We're getting off of what we're addressing right now.

MRS. TURNER: My mother bought that house for a huge amount of money and I have the papers to prove that she put over \$90,000 of home equity loan into that house and besides that -- I'm sorry.

JAMES SOFIATI: My name is James Sofiati and I'm from the Town of Newbrugh. I'm not prepared as much as everybody else. I'm kind of against the site. There's

a bunch of reasons. The last lady from Middletown has concern in her letter about fire and parking and I definitely know that there's no parking around the area. That's one of the major problems that we have in the area is parking. There are going to be other major problems because I have also been in the house but again, we're not here to discuss that as far as money and stuff. But, for the record, \$135,000 will not do anything for that house. And also, I would like to state because there are --

MR. FENWICK: If you're not going to address this part of the Board, sit down, okay, go ahead.

MR. SOFIATI: I'd also like to point out that I believe that I know of two other places that are much more suited to this. One is the O'Neil School which is right down on 94, which is not in such a major intersection as we're talking about right here. And there's also another building in the Town of Newburgh, which is in back of, I believe George Carroll Bussing Company. On that road, there, there's another old school in there which makes we want to think of that with a building such as these here, which are already prepared for a school and it would seem to me that these would be much more feasible places to put this again I'm not, I'm definitely in favor of childcare. I have started a family myself and we're going through the problem of finding day-care. It's very hard. And such, and basically that's all I have to say.

MR. FENWICK: I have got to go to somebody new and we'll get back to you.

MR. DOWD: May I make a brief comment?

MR. FENWICK: We'll wait till we're done with the comments from the audience.

NELSON LOPES: My name is Nelson Lopes and I'm from Monroe. I'm a social worker and I'm a professional working with children for the last 10, 15 years. And when you talk about a program that's going to educate children that are going to learn most of their knowledge between the ages of 3 and 5, I call that a professional business. And being that the laws have missed what we call quote unquote day-care, I think it's incumbent upon the Board to look at that and try to rectify that because the majority of the people I hear seated here making statements and that they are saying is that it's needed and being that you're the body that has to deal with something like that, I really do think it's

encumbent upon the officials of the town to look at this. IBM is offering monies for programs of this particular nature because they want to see this development in the community so that their employees can have better child-care for their employees and when the State and organizations like IBM set a mandate to offer monies to make better programs in the community, I think it's encumbent on the local community to back it and support it.

LISA TURNER: I'm gong to speak in reference to the house. Number 1, my daughter is 4 years old and she's in day-care. She currently goes to a day-care center that's right off Route 94. I can't talk about it.

JOHN TURNER: Just a little point of reference, I'd like to make since she's upset. Concerning Mira Rumsey, I'd like to clarify Mira Rumsey was in contract to buy this house.

MR. FENWICK: You have your problems there, that does not concern this Board one bit. What this Board has to address and what I told everybody else here is we have to address that this in fact is going to be in a PI zone, should it be in a PI zone. That's what we're addressing, nothing else. We have heard a lot of need and I've let the people go on in their cases to establish this in fact belongs or is under the definition in this book of belonging in a PI planned industrial zone. That's what you have to address to us.

MR. TURNER: All right, just wanted to make you aware just wanted to make you aware that there are people that are here for other reasons, other than what they are saying. Thank you.

MR. FENWICK: Anyone else? I'm going to give the last chance, this is it I'm going to close the public hearing. There will be no other comments after that. That will be it.

(Whereupon a brief recess was taken.)

MR. FENWICK: I'm just going to ask you to give to the public what you told me, Dan, about we're under one public hearing interpretation and area variance.

MR. LUCIA: What I was just explaining to the Chairman from force of habit, usually at the end, we say we're going to close the public hearing and the Board entertains motions on the application. This application is actually two applications combined, one for interpretation and what's all we have heard so far. The second one, if

that's decided favorably, is for several area variances. So, what I just suggested to the Chairman, we don't want to close the public hearing but instead just close that portion of the public comment on the interpretation. The public hearing is still open and if we reach the area variance, the applicant and the public have an opportunity to publically speak again on those issues. You say you had some response.

MR. DOWD: Just to make comments very brief comments to Mr. Sofiati's comments.

MR. FENWICK: I'm going to entertain any more comments from the audience in reference to the interpretation.

MR. DOWD: I wanted to make the record very clear here. I'm not asking my client to say anything about the funding. It is not appropriate here, not qualified to say how much money has to go into that. We have professionals that have been in that building, engineers of all shapes and sizes, electricians, plumbers, the whole works. We have had social services people. We have had Health Department people. We have had everyone go into that building and look at the building and I just want that to be clear, very clear on the record. We have had many, many people in this building and we are still here for that application because we believe we can get it up to the necessary code requirements to meet all the requirements and we provided a site plan for the Planning Board and you have a copy of that which shows adequate off site parking which we would supply as part of our plan. I can address those issues. I don't think it's necessary. I wanted to make the record, very, very clear that that's a program that's very well thought out. We have had a number of people look at it and I just want the Board and I think the Board can appreciate that, we're not here to address funding issues or real engineering issues.

MR. FENWICK: I don't care about any of that, okay?

MR. DOWD: Lastly, Mr. Augello referred to a study which I have a copy, which I'd like to make part of the record and give to the Board, concerns the Rockland County Planning for Day-Care.

MR. FENWICK: I'm not going to have time to read this. She basically touched on it and it will become part of the record. I don't have time to read it and if the members would like, I'll pass it around to them. It's several pages long but go ahead.

MS. GUGLIELMI: Yes, I'd like to make one comment about the childcare center going into a planned industrial zone. Across the United States, not only in Orange County, childcare centers are increasingly becoming a part of industrial parks, on-site day-cares for large manufacturing corporations and other businesses, including the United States Post Office in upstate New York which has one on-site in a industrial park. These are all industrial areas, business likewise office buildings and industrial areas. The State Economic for Economic Development, J.D.A. requires before submitting the application that you are in conjunction working with manufacturing corporations to be able to apply for the loan. This site was first reviewed and approved by N.A.I.D. They first had to see that we were working with manufacturing corporations, that we were accessible to these manufacturing corporations within a reasonable amount of time to get there. Am I right and as such, the requirments were very stringent and that policy was set to be able to do that. We do have several businesses and these businesses have been waiting for a very long time, many of them in New Windsor. There was also a survey that was also done, specifically to the businesses in New Windsor and they expressed the need of this and that's beyond the point but they know the site, New Windsor is not that big. You can tell someone specifically where it is and they know the house, as you, yourselves when we first came before you, you knew the property immediately. And many people have been in the property for whatever different reasons, okay, we have had professionals in that house constantly, when we first went into contract, we had more people in and out of that house than the current people living there knew what to do with. All professionals. All giving documentation reports, estimates, pertient code on what would have to be done. The zone and the house has always been residential. You speak of it in a way as if something industrial had already happened on the property and we're trying to do a day-care center when it used to be a manufacturing plant. The house has never been anything but the house. We had environmental assessment report that came absolutely clean, the property is perfect for this use and I just want to rectify some of the questions and some of the answers and why this particular house and being in a planned industrial area it's a mixed use. We've got some commercial, we've got some residential and down there we have American Felt & Filter down in the woods and it's down by the river. And there's not much else that's going to go around that zone that would be a hinderance to the day-care center. Newburgh Auto Park has parked cars, that's it. And that's what I wanted

to say.

MR. TORLEY: As you pointed out very nicely, there are some individuals in other codes that you're asking us to fill by interpretation. Have you approached the Town Board so they can more properly be filed by legislative action?

MR. DOWD: As best I can address it, is by saying we are down here for the duration. You make certain choices in representing a client and the zoning amendment or the zoning change that would be required could be a lengthy one. We felt at the time we got involved in this process that it would not be as lengthy as it was and therefore, this would be the shortcut. We're not there anymore. I believe some conversations have taken place between the principles of my firm and the Town Board members but that has not been pursued because we have put so much time and effort into this process that at this stage of the game, it would not benefit our client, who has spent an awful lot of money, to get her to go on a different track all together. Ultimately, that might be the way to go but right now, we don't have the time to do that right now we've spent the resources here and that's why we are here.

MR. FENWICK: I'd like to say I wish you had gone that way and not to take the responsibility off this Board but again, this town has not addressed day-care centers and given it a definition and that's --

MR. DOWD: By the time we got to the point where we are tonight, an awful lot of water had gone over the bridge and time and resources had been expended and this is the way we chose to go. I understand your problem and your difficulty and believe me, I, as being an attorney for Zoning Boards, I understand that. Yet, you're charged with the duty and we're asking you to perform that duty.

MR. TORLEY: If the decision may not be to your liking, I would urge you to see if the Town Board can change it.

MR. DOWD: We have a number of resources which you're well aware of.

MR. FENWICK: Anymore comments? I'm going to start over here.

MR. NUGENT: No, I don't have any. I think the presentation was excellent. I'm not sure that I'm totally prepared yet to make a decision on an interpretation. Maybe

I will by the time I vote.

MR. TORLEY: You have convinced me that it's a professional business. You have still not convinced me that it necessarily belongs in this zone. From the point of view that I interpret that number 1 on here a bit differently than you do. I see it as it allowing executive and administrative offices. I'd like to see a day-care center. I'm in the same boat as Jim, I don't know quite where I am on this.

MR. KONKOL: Well, first of all, I want to clear up the record. I'm not against the day-care center either. I mean the day-care center is needed. The interpretation, punctuation in law is very important, being an ex-court stenographer in the service at one time, the question mark, the exclamation mark, comma and period is very important and that's definitely defined. Any court will tell you that a comma says it leads into offices and so forth. It doesn't say professional businesses and at this time, I think, you know, the long and dragged out period between both Boards and so forth was due to some misrepresentation from the very beginning and for you to ask us is it a professional business, sure, it's a professional business but it's not permitted and it doesn't fit this law. There's also a question of if we were to grant the variance, is this site proper. And there's a lot of questions there that other Boards would have to answer that, Fire Inspector, Police Department. There was an accident there tonight at 5:00.

MR. FENWICK: Bad accident.

MR. KONKOL: And you go down the road and you see things happen. You say how did that building ever get there, why did that school wall fall in, how, where was the Building Inspectors when this was going on and this Board has to live with that. And if something happens five years from now or two years from now, it's going to be saying oh well, you guys granted it. So, I really think we should be looking at this closely.

MR. TORLEY: Again, I think we all want day-care centers in the town and the day-care center you have lined out is extremely attractive but we're bound by the code as it is and we should be making interpretations, I think, as narrowly as we can and always bearing in mind that it's directly in our code. That interpretation must be bearing in mind the health and safety of the town. And without further restrictions on day-care centers, in OLI zones, I mean planned industrial zones, my apologies, my conscience would bother me if we did not have a more very

stringent set of guidelines where they can be exactly can be there, what kind of fencing etc. You're asking me to say, to pass that responsibility to another agency and that wouldn't clear my conscience if something happens. I want to see a day-care center. I'm not convinced that by the definition of the code and the case law that you presented very nicely that we can interpret that day-care center as meeting the professional offices as I read that line in a PI zone. Please convince me, if you can.

MR. FINNEGAN: I think I have enough information to classify this as a professional business in a PI zone and I don't read column A-1 as Dan does.

MR. FENWICK: The only thing I'm going to ask our attorney if we do have enough evidence, if it were interpreted to the positive, if we have enough evidence to write an interpretation and also the other way around.

MR. LUCIA: I think you've heard enough to decide it both ways. That tosses it squarely back in your lap.

MR. FENWICK: Mr. Dowd, anything else you'd like to say?

MR. DOWD: Well, I don't know really where I am here. I think everybody has to sort of struggle with this, I guess that's good for me and not so good for you folks. Some of the issues I guess that are raised, you know, you're charged with the duty to interpret the zoning law and you're wrestling with that and I can appreciate that and that's your job. That's your function and one of the functions of the Board. As Mr. Torley is afraid of passing this, some of the responsibilities for safety issues to another Board. The Planning Board has the same function in that regard as you do. Yours is a, really a general provision in your code to look at health and safety and welfare but the actual nuts and bolts issue of safety and the welfare of the community and everything that's got to go into the site is really Planning Board issues. You're not passing the responsibility, all you're doing is having them do what you're charged to do, just like you're being charged to make an interpretation. The fact that there's a traffic accident in that area, there's traffic accidents all over the place. Maybe in the Planning Board process, it would be suggested that stop signs or some other traffic signs can be proposed to try and cut down on some of those accidents. Also, I'm sure that you have other day-care sites, Butter Hill which is on Route 94,

I'm sure there are accidents on Route 94, just about any major artery you're going to have accidents. To plan, as it's proposed, and the Planning Board will look at, we'll show that we're going to every extent to minimize the impact of this day-care center on that location. We're having a turn around so that the children can go in front of the school so that they are not left off at the corner going right up to the door. We're going to have perimeter of the playing areas fenced in. The Planning Board would say there's ways of addressing those traffic issues. That's what the SEQRA, what that is all about so I would ask you not to feel the way that you are somehow throwing your responsibility upon another Board. You're facing your responsibility with the interpretation issue and you have to let the Planning Board face their issues on those very same issues and the real nuts and bolts, engineering and health issues that will come before that, my client will have to address. I don't really know what else I can say to the members who are interpreting commas instead of periods and when everything is fair game in legal interpretation.

MR. FENWICK: Are you looking to be defined under Column A Item 1?

MR. DOWD: Yes.

MR. FENWICK: That's what you want?

MR. DOWD: Yes, as professional business.

MR. FENWICK: That's the only place it fits. I can't see everything else, everything else goes farther and farther but --

MR. DOWD: That's what I'm here for is that's the interpretation that I'm here for and that's what I'm here for. Commas and periods and exclamation points, it's all pitfalls of legal lingo, legal mumbo jumbo that courts sometimes have to interpret. When we as lawyers, we have to guide you folks at Zoning Boards. I'm trying to advocate, other times I'm trying to do the same thing Dan's trying to do for you right now. It's not easy. It would be a shame to see this particular program be killed for a comma. Okay, and that's the way I feel about that right now and I want you to think about it right now. You're saying it's a professional business, you're saying that it's a need in the community and yet, you're willing to turn around and say or possibly say that because of a comma, which you believe now is professional business defined

administrative and executive offices that you'd be willing to kill this program. And that would be a shame for a comma. Okay, I'm asking you to think in that respect. Don't throw the baby out for the bath water. I think this project, don't throw it out for a comma.

MR. NUGENT: What I'm having problems with, what I'm wrestling with myself personally is that I'm trying to figure out in 1967, the zoning laws came into effect in New Windsor. I don't believe there was a day-care center in New Windsor in 1967. I've lived there all my life and what I'm trying to interpret in my mind did they have that in mind, did they have that professional business in mind then when they drew these up.

MR. FENWICK: I don't think they could have going right back to what you said.

MR. NUGENT: It couldn't have so how, this is the part that I'm struggling with, how can I interpret something that they may have put in there which they didn't even know about.

MR. LUCIA: That's a very real issue and you see it in constitutional law. We live under a constitution that was drafted 200 years ago but it's continually evolving. Basically, the Town Board created an ordinance in 1967 that did not consider day-care centers. We now are faced with the task of interpreting that ordinance in the light of the court decisions and basically trying to look into the minds of what the Town Board would have thought, had they considered the issue. Sometimes, you get some guidance by legislative history. Here, unfortunately, there's none so we don't know that this is something that the Town Board ever really considered. The other thing you have to factor in the decision which is a typical interpretation is that there are defined State policies with regard to day-care. The very last issue Mr. Dowd and I discussed were State pre-emptions and in home day-care cases, the most recent court decision seemed to pre-empt it pretty clearly. The town's can't regulate home day-care. It's a State issue. Mr. Dowd is arguing that Social Services Law Section 410-d pre-empts it in the issue of a commercial day-care for this applicant, although he admitted that there doesn't seem to be that same strong case on point that exists for home day-care. That case may well be coming. I don't know. That case may well come out of this application but unfortunately, the dilemma you have is you have to factor in everything. You have experience on a Zoning Board and in your traditional framework or interpreting and try and balance that with the State policy. The State

policy hasn't gone quite that far so that it's necessarily mandating your finding that this is a day-care center.

MR. NUGENT: But it has in other counties, as that piece of evidence was shown in Rockland County, I believe it was that they were showing.

MR. FENWICK: They are trying to set up their own --

MR. KONKOL: There's nothing on PI zone.

MR. LUCIA: It's the Town of Clarkstown Residential day-care case coming down last year and I'm not actually sure whether the June date is before or after that decision came down but it was in the works for a while. But, that's home day-care. This is commercial so we really, the decision unfortunately falls to the Board. You really have to let the law evolve from what you think the Town Board would have done, had they considered this back when they adopted the ordinance as well as the State policies.

MR. NUGENT: No matter what decision you're going to make, you'll be wrong.

MR. TORLEY: I would like input from both these matters if you're acting as a quasi judicial body, Court of Appeals almost, where does the issue of classic case of judicial restraint, how are we going to be bound to legislature rather than interpret it?

MR. LUCIA: You should, you know, make your interpretation as narrowly as possible, simply because you're setting precedent under that ordinance until it's amended by the Town Board. So, you don't want to be overly broad brush making your interpretations. You know, you can decline making an interpretation which is another possibility although given what you have heard, that might be difficult but you can say that this is something that the Town Board never considered. We have absolutely no evidence to indicate that they would have voted, had they considered it, we can't interpret this, it's not permitted use under the code that backs away from your responsibility as a Zoning Board but, you certainly would be precedent for you making that finding.

MR. DOWD: Well, whether to exercise judicial restraint and how to interpret it, that's a classic constitutional issue everybody has an opinion on. As far as the United States, depends on whether you're a strict constructionist or a liberal constructionist. You have to decide

as a body how you want to interpret your zoning code. Obviously, I'm asking to use maybe a little broader stroke than maybe Dan might recommend to you. I don't foresee tremendous repercussions coming from your approving this project. Maybe you do. I don't know where they are. Everyone agrees that day-care center is needed. Everyone agrees that it's a great idea whose time has come. How bad can it be to have a couple more in your town, if you were in a PI or OLI or whatever other zones, you might have, is it such a bad thing? I don't know the answer to that. That's something you might have to consider how to interpret this. Certainly, the people out in the audience are telling you there's a need and you'll recognize that and the law as it is developing seems to indicate and the Rockland County is a perfect example of the zoning law that Ms. Augello presented to you, shows that everyone is thinking about where they should be and these kind of day-care centers should be almost every zone should be allowed in. They are a beautiful service organization to the community. They help everybody. It's a much better use for land than other uses that are permitted under the code. What do you want to see there, a day-care center or some manufacturing smelting plant or something that might be permitted that's blowing out fumes and creating more traffic with 300 employees. That's something you can consider. The whole idea of judicial constraints, that's within the realm of this Board, I would ask you to use a little broader stroke when you're talking about this kind of a project, where the need is so great and the repercussions, I don't believe would be severe to this town at all.

MR. FENWICK: The way I feel about it right now, right now we do not have day-care centers, we don't have a definition of day-care centers. The way I'm looking at it, Mr. Dowd has brought his client's case in and does this what you're proposing, what you want to call it, does this in fact fit into a PI zone. I don't want to hear the words day-care center. I don't want to write the law. That's what I would like to avoid right now and I, to my feelings, as to what interpretation is, that's what we're looking for. Does what you're bringing in, whatever it is, your Wind in the Willows, does that belong. Is that professional Column A Item #1? Does it belong in that category? I think if we stay into this, we keep staying into day-care center situation, we're going to be writing the law. That's what my feelings are. Any thoughts on that?

MR. LUCIA: No, it's very succinct.

MR. FENWICK: If we look at it that way rather than looking at we're going to set the world on fire in New Windsor by saying day-care centers period are allowed in there, I think we're making a big mistake.

MR. NUGENT: I think everybody on this Board, I'm going to speak for myself, I believe that he's presented the case that yes, it is a professional business. Now, we have to determine whether it belongs in the PI zone. Someone spoke in the audience, might have been Ms. Guglielmi who said that there are industrial parks in the United States that are requiring a day-care center or they are putting them in.

MR. FENWICK: That's true.

MR. NUGENT: Maybe that's not a bad idea. Maybe it's time for our Board to become a little progressive and say yes, this does belong in that.

MR. TANNER: I just don't know that it's our province to say that yes, we should have day-care centers in industrial areas. We are writing the law at this point. We're saying hey, we think it should be.

MR. FENWICK: That's what I'm saying to get away from that situation. What my problem, if I can keep it in my mind that way we're not writing the law. I don't want this to be called a day-care center because in your definition, you have some kind of a system and I don't remember what the name of it is and you have a system for what you're doing. It's some kind of professional system that you guide children and the next person that comes in here with a day-care center may not have that system. They may have a completely different set up altogether. They may not have professionals on staff but they may have what qualifies as a day-care center. That's the reason why I'd like to stay away from the definition of a day-care center and have what you're telling me does that in fact belong in A-1 as a professional business or under the category Column A Item 1.

MR. DOWD: If you interpret this as a professional business as a permitted use in A-1 zone, I don't think we care what you want to call this. At this stage of the game.

MR. FENWICK: I'll tell you we care because it's going to be big in this town and somethings got to happen in this town. It's to be done.

MR. DOWD: I understand that perfectly. I'm somewhat doing this half light heartedly but I can tell you the point of view that I'm taking here, we wanted that: much I understand that the problem of precedent and saying day-care centers are professional businesses and each day-care center proposal that can come before you can be totally different. That's a very good distinction to make and you can also understand that you might not be making precedent at all here and if you take your tact, I have no problem with that. Especially, if you give us what we want.

MR. FENWICK: I'm the one that's trying to solve the problems with myself, okay, and everyone on this Board is having a problem and I'm sure right now --

MR. DOWD: I hear you. And it's up to the Board.

MR. FENWICK: That's what I would like, if it comes to a motion this evening, that we're talking about this piece of property, these aspects of business, this Wind in the Willows, does it in fact fall under Column A Item 1. That's it. We need a motion.

MR. NUGENT: How do you word a motion for an interpretation?

MR. FENWICK: Does this in fact, this Wind in the Willows, the case as presented to us, fall under Column A Item 1.

MR. NUGENT: I'll make that motion. I don't know how to word it but I'll make it.

MR. FINNEGAN: I'll second it.

ROLL CALL:

Mr. Torley	I really wish I could do this but I think it's stepping beyond our bounds and making to broad an interpretation. I must, I hate this, but I have to say no.
Mr. Finnegan	Aye
Mr. Konkol	No
Mr. Tanner	No
Mr. Nugent	Aye
Mr. Fenwick	Aye

MR. LUCIA: It does not carry. To carry, you need four affirmative votes to create the interpretation.

R. FENWICK: I'm going to ask you to interpret it for the applicant.

MR. LUCIA: You would need four affirmative votes to sustain the interpretation that you seek. You only have three affirmative votes so the application for the interpretation does not carry.

MR. DOWD: Can I ask a general question about the absent member or is it a vacancy?

MR. FENWICK: Vacancy.

MR. DOWD: That's the one that was promoted to the Planning Board?

MR. FENWICK: Yes. I wish I had been notified before, believe me. I really wish that I had been told that that was going to happen. I read about it in the paper and the official notification was lying here tonight. I did not want this to happen because of this.

MR. DOWD: Well, the only thing I can do is ask for a reconsideration at this time. I mean I realize that I don't know if the Board intended or expected a three/three tie,, especially when you're absent a member but I don't know if there's any precedent for doing this, Dan but --

MR. LUCIA: Yes, town law 267 sub 7, I believe it's just give me a minute to look at it. I'm sorry, subsection 6 of Town Law 267 that provides that upon motion initiated by any member and adopted by the unanimous vote of members present but not less than the majority of all the members, the Board of Appeals shall review at a rehearing held upon notice given as upon an original hearing, any order, decision or determination of the Board not previously reviewed. Upon such rehearing and provided it shall then, appearing that the rights vested prior thereto and persons acting in good faith in reliance upon the decision reviewed will not be prejudiced, the Board may upon the concurring vote, reverse, modify or annul its original order, decision or determination. Basically, you need an unanimous vote to schedule a rehearing, then the renotices and new public hearing and you would need unanimous vote to modify your previous decision.

MR. FINNEGAN: Can you take a revote at a new meeting, if you might have made a decision?

MR. LUCIA: You'd have to identify what new information is presented, the public hearing is not closed.

MR. DOWD: Is there a provivision for a member who casts a vote who may wish to change the vote to do so?

MR. LUCIA: Since the public hearing isn't closed, I suppose you could make a new motion but if as just indicated is based on new information, you probably should have something in the record to indicate what it is that is changing the vote, other than the outcome of the previous vote.

MR. TORLEY: Three/three tie vote, another motion worded in some different manner.

MR. DOWD: I guess the situation I'm really asking for in most Boards, whether it be Town Boards, Planning Boards or County Legislatures, you have a situation where a vote is taken and one member may decide he wants to change the vote. There's a mechanism under Robert's Rules of Order and other kinds of procedural situations, either through a motion or recount or that person can change his vote. For the record, I'm asking you is that case in the Zoning Board of Appeals for the Town of New Windsor?

MR. FENWICK: I'll leave that to our attorney.

MR. LUCIA: I don't see a problem with it. The original question arose because of new information. I don't think we ought to revote without having some new information around. I suppose if you get a motion to revote it, it can be voted upon once again.

MR. FENWICK: If somebody makes a motion.

MR. DOWD: How about an individual member who wants to change it as opposed to the Board asking to recount one particular member, if he wishes to change his vote.

MR. LUCIA: If there's a motion and a second, yes.

MR. DOWD: Can we require a motion to let him change the vote?

MR. LUCIA: I thought you wanted a motion for a revote.

MR. DOWD: Should one of the three wish to change the vote, could he make an application to the Board to let him change his vote?

MR. FENWICK: I'm going to ask if that's proper and if it

6-10-91

is, I'll ask the Board.

MR. LUCIA: To be honest with you, I don't know the answer to that. It may be proper but I think I would prefer to see a motion to revote the underlying issue and have it brought to new vote with all members voting.

MR. FENWICK: I'll entertain that motion.

MR. FINNEGAN: I'll make a motion revote on the issue.

MR. FENWICK: Do we have a second?

MR. NUGENT: Don't do it.

MR. FENWICK: I would say with a lack of a second, we're not going to have a change, I mean Mr. Finnegan was an aye and due to the lack of a second --

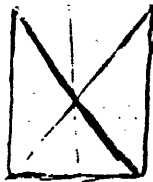
MR. DOWD: My client appreciates the time the Board took and again, recognizes that you struggle with the issue. I appreciate the time you took.

MR. TORLEY: Please go to the Town Board so the proper legislative body can write the code. I really don't think we should write the code.

MR. DOWD: Thank you.

MR. FENWICK: At this time, I close the public hearing.

ZONING BOARD OF APPEALS
Regular Session
JUNE 10, 1991



12

AGENDA:

7:30 p.m. - ROLL CALL

Motion to accept minutes of 5/13/91 meeting if available.

PRELIMINARY MEETING:

*ET UP FOR
PUBLIC
HEARING*
1. VOGLESONG, CHRISTINE - Request for 12 ft. rear yard variance to construct screened-in porch located at 360 Walnut Avenue (BDL) in R-4 zone.

PUBLIC HEARING:

APPROVED
2. PAPPIS, MICHAEL - Public hearing held on 5/13/91 was adjourned pending review from Orange County Planning & Development.

APPROVED
3. WIND IN THE WILLOWS - Request for Interpretation and 11,265 s.f. lot area, 10.7 ft and 7 ft. front yard variance and 2 ft. 3 in. building height to operate day-care center in PI zone.
Present: Kevin T. Dowd, Esq.

*ED REVIEW
IN ORANGE
COUNTY PLANNING*
4. FORGE HILL COUNTRY FURNITURE - Request for 48 s.f. sign variance for freestanding sign at 815 Blooming Grove Tpk. in C zone. Present: Jane Tanner.

RETURN
FORMAL DECISIONS:* (1) COHEN
(2) KOPKO
(3) DE MILT
(4) GORDON

*FORMAL DECISIONS ARE SUBJECT TO AVAILABILITY.

PAT - 565-8550 (O)
562-7107 (H)

#5 PRELIMINARY
FRISCH REAR YARD

ZONING BOARD OF APPEALS
April 22, 1991

AGENDA: *Revised*

7:30 p.m. - Roll Call

Motion to adopt minutes of 4/8/91 meeting if available.

PRELIMINARY MEETING:

TABLE

*GO BACK TO
PLANNING BOARD
NEED LOT AREA
NEED LOT WIDTH*

1. SUN OIL COMPANY - Request for 58.5 ft. front yard, 26.25 ft. side yard, 12 ft. building height and setback for sign to construct a retail store and filling station on NYS Route 32/Old Forge Hill Rd. in a C zone. Present: Mr. Ralph Holt.

*SET UP FOR
PUBLIC
HEARINGS*

2. WIND IN THE WILLOWS - FOURTH PRELIMINARY - Referred by Planning Board per their minutes of the 3/13/91 meeting enclosed herewith.

*SET UP FOR
PUBLIC HEARINGS*

3. GORDON, ROBIN - Request for 27 ft. 4 in. rear yard variance to replace old deck with new structure at 351 Nina Street in an R-4 zone.

PUBLIC HEARING:

APPROVED

4. COHEN, MICHAEL - Continuance of public hearing adjourned from 4/8/91 meeting pending review of Orange County Planning Dept.

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*FORMAL DECISIONS: (1) LUGO, PEDRO APPROVED
(2) ~~AUGUST ASSOCS. NOT DONE~~
(3) ~~RAMOS, DAVID NOT DONE~~

PAT - 565-8550 (O)
562-7107 (H)

*Please note that formal decisions are prepared based upon the transcript of the public hearings and may not be readily available for adoption at this meeting.

MEMORANDUM

TO: TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS
FROM: TOWN OF NEW WINDSOR PLANNING BOARD
DATE: APRIL 11, 1991
SUBJECT: WIND IN THE WILLOWS (P.B. #90-46) - REFERRAL

Dear Z.B.A. Members:

As reflected in the attached minutes of the Planning Board Meeting of March 13, 1991, the Planning Board has reviewed the above referenced application.

The decision of the Planning Board, as reflected in the attached minutes, is to refer this matter to the Zoning Board of Appeals. A detail of specifics of this referral is included in the attached minutes for your review.

Thank You.

Very truly yours,

Myra Mason
Myra Mason,
Secretary for the Planning Board

MLM:mlm

cc: Carl Schiefer, P.B. Chairman
Mark J. Edsall, P.E. - P.B. Engineer
Kevin Dowd, Atty. for the Applicant
~~P.B. File #90-46~~

WIND IN THE WILLOWS SITE PLAN (90-46) WALSH AVENUE

Kevin T. Dowd, Esq. of Drake, Sommers, Loeb, Tarshis & Catania came before the Board representing this proposal.

MR. SCHIEFER: I'm going to ask you to present what you're here for but I'd like to advise you we all the Members of the Board have been given copies of the meeting of the three meetings you had with the Zoning Board. We're well aware of what went on there and one comment right now, you would not even be here if they had not sent it back until the fire thing is resolved. I'm not going to go and our Board is not going to get into is it a two-story, is it a three-story, is it a four-story? I've been down there, I had some questions. The Fire Inspector will have to pass on that so before you come back to us, I'd like that taken care of.

MR. DOWD: Sure.

MR. SCHIEFER: Okay, proceed.

MR. DOWD: My name is Kevin Dowd, for those of you who don't know me, I'm from the firm of Drake, Sommers, Loeb, Tarshis & Catania and I'm here on behalf of, I wish I was here tonight to present to you a preliminary site plan to get down to the nuts and bolts of a preliminary site plan but as Mr. Schiefer has said, that we have run into a bit of a snag. We have been before this Board back in September, October, we have presented a conceptual plan to this Board and we ran into a situation where we need area variances. And this Board referred it, this matter, the day care center, to the Zoning Board for area variances. And as you are aware, there have been three separate hearings before the Zoning Board and in three separate occasions, we have come up with no area variances and it ended up with a referral back to this Board with a request by the Zoning Board of Appeals for you to send it back to them requesting an interpretation of the zoning law and/or requesting a use variance to go with the area variance.

I am here tonight, gentlemen, to implore, if you will, the concept which you approved and which you felt was a good idea is to stick with your original assessment of this day care project as being an appropriate use for the PI zone, that it will be placed in.

MR. VAN LEEUWEN: We didn't approve anything.

MR. SCHIEFER: Let him finish, you're right but what he said is conceptually we are on record, there's no official approval but conceptually we had no problem.

MR. VAN LEEUWEN: As long as it goes with the zoning rules, that's fine.

MR. DOWD: The day care center, as reflected by the minutes of this Board, can be classified as professional business which is permitted use in the PI zone. This Board again based upon the minutes and the prior activities of this Board, felt comfortable with that designation. If it did not feel comfortable with that designation, it would have sent it to a Zoning Board of Appeals for an interpretation and/or a use variance.

It's our contention and our position that you have, you were not mistaken in your original assessment that this project falls within the professional business framework to make it a permitted use in a PI zone. This is not a school and the Zoning Board of Appeals seemed to be very confused about that issue and concerned about that issue. It's not a school. I'm going to assure you it's not a school. State Law provides that day care centers are licensed by the Social Services Department. Any school in the State must be certified by the Educational Department. This program will have a nursery school and a kindergarten program. However, they are not required by State Law to be certified by State Education Department. And I'll be glad to show Mr. Krieger, your attorney, the applicable provision of the law of the Education Law and Social Services Law.

The applicant will certainly abide by all of the requirements of this Board and the site plan approval. It must, in order to get licensed by Social Services Department, abide by all of the many rules and regulations and they are very stringent, very particular about enforcing those provisions before they can even operate it.

I want to assure the Board they'll do that and therefore I'm here again asking you to please refer it back to the Zoning Board Of Appeals for the area variance and nothing more.

MR. SCHIEFER: Okay. What Mr. VanLeeuwen started to tell you I think what he started to say this Board does not have the authority to interpret the zoning laws. The Zoning Board of Appeals unfortunately does. The Zoning Board of Appeals does. As a matter of fact,

I'm glad they have that responsibility. I don't want it. Now, however, if there is a necessary interpretation we do not have the authority to interpret it, that has to come from the Zoning Board of Appeals. They have that authority.

MR. DOWD: Not, I agree with you, I in fact I did not use the word interpretation so much as that you, when you have any site plan coming before you, you have to make at least a preliminary determination as to whether or not if it's within the code. The problem here is the day care center is not defined anywhere in your code, thus this Board, when it first saw the plan, felt comfortable with the idea that the day care center fell into a business use.

MR. SCHIEFER: Our minutes and the Building Inspector has referenced two classrooms in the basement and terms I can understand why the question may have come up. However, again this Board is not going to make that determination. Is there anyone on the Board that has any questions about that if it comes to interpretation, the Zoning Board of Appeals has got to make it. Does that belong in this zone.

MR. VAN LEEUWEN: That's up to the Zoning Board of Appeals, Mr. Chairman.

MR. DUBALDI: Not up to the Planning Board.

MR. SCHIEFER: Since they have challenged it and we have not given preliminary approval, yes, we gave conceptual approval.

MR. MC CARVILLE: I object with conceptual.

MR. SCHIEFER: Do you want me to read your comment? It's not an official thing. It was a conceptual thing.

MR. KRIEGER: It's informal, it doesn't exist in the code anyway.

MR. VAN LEEUWEN: Very informal because we didn't know what the facts were. We said that we didn't know what the facts were at the time. Basically, what you were here for you weren't here yourself, Kevin, we said we like it.

MR. SCHIEFER: The second time they were in twice the second time we did nothing but send them to the Zoning Board of Appeals for the area variance.

MR. DUBALDI: Don't some Boards vote on actual conceptual approval?

MR. EDSALL: New Windsor has no intermediate steps in site plan approval. There's purely an application and then there's approval. There's nothing in between.

MR. MC CARVILLE: Conceptual as it fits into our procedure of approval.

MR. SCHIEFER: It's not a legal, we did not vote on it. We didn't do anything. We discussed it. We thought preliminarily the idea was not bad, that I don't believe anything has changed. I carefully reviewed these minutes, if you want to see them, your comments are in there along with the rest of us. But we're challenged by the Zoning Board of Appeals and if it comes to an interpretation, this Board does not have the authority and I don't prior to my former misstatement, I don't want the authority.

MR. VAN LEEUWEN: I suggest you sit down with the Fire Inspector. Without the Fire Inspector, we couldn't approve it. If the Zoning Board of Appeals gave you approval, okay, if and you did not have the Fire Inspector approval, we can't do a damn thing.

MR. DOWD: We fully understand that we are not even getting back to you for any kind of approval process when we can rectify all the building code violations and bring everything up to snuff until we get the area variance and we can't get the area variance because the Zoning Board of Appeals won't act.

MR. SCHIEFER: What I've seen, we send them back to you ask for an interpretation of the zoning ordinance, is it permissible in the code and ask for an area variance at the same time. I see no reason for you to go to them twice.

MR. DOWD: Let me ask the Board this question. When you have any site plan, not just for a day care center and is presented to you initially and it's got to go to the Zoning Board of Appeals for a variance, this Board makes a determination amongst itself that that particular use that is proposed is a permissible use and therefore needs area variances. That's the same type of situation that's occurred here.

MR. SCHIEFER: Normally, it's very plain, it's black and white. This is permitted in the zone, this is not, this is not. As you pointed out, in your initial

presentation and you pointed out when we started this, this is not really listed anywhere in the zoning law and again, if it has to come up for the interpretation, we do not have the authority to interpret it. Now, we'd like to defer that to the Zoning Board of Appeals. We have to.

MR. VAN LEEUWEN: No choice. We have no choice.

MR. SCHIEFER: I hate to bounce you back and forth. I read your minutes three times and the bouncing back and forth, I'd much rather, you know, dispose of the matter but, you know, my hands are tied. I don't have the authority. I checked with our lawyer. I checked with their lawyer and they said they, that's not your call.

MR. DOWD: Perhaps this Board does not necessarily have to refer to the Zoning Board of Appeals for a use interpretation or for a use variance or for a--

MR. VAN LEEUWEN: We have to, if it does not meet the code, Kevin, we have to refer it to the Zoning Board. We have no choice.

MR. DUBALDI: We can't grant variances.

MR. DOWD: I understand that.

MR. SCHIEFER: Normally, we don't have to, normally it's pretty clear cut. This time we made an assumption, it's been pointed out to us you don't have the authority to interpret that law.

MR. VAN LEEUWEN: We can sit here and belabor this thing all night. It's not going to get us anywhere. I make a motion we move on.

MR. SCHIEFER: Does anyone have any problem with getting an interpretation from the Zoning Board of Appeals what zone this belongs in?

MR. MC CARVILLE: No.

MR. PAGANO: Should have went to them in the first place. I don't understand why they kicked it back. All the language that they use--

MR. SCHIEFER: It took three meetings to get it back to us. I do have to apologize for that. It's a big waste of time, if we do anything else, it will come back again and hopefully the next time it comes back, we can take action on it. The other comments I'm

going to ask the people not to put it on our agenda until you have met the fire thing. I'm not going to get into that argument, that's up to the Fire Inspector. If you can resolve that with him, fine but. My personal feeling if you get both of those approvals, I have no problem with it. But, I think we are going to have to make a motion to send this to the Zoning Board of Appeals for a use variance or not a variance, an interpretation. I don't want to suggest that doesn't belong. I want them to tell me does it or doesn't it belong in that zone. And then the second thing before we come back here, I want the issue of the Fire Inspector resolved.

MR. DOWD: Is there anything that this Board is uncomfortable with in classifying this day care center as a professional business?

MR. VAN LEEUWEN: Kevin, we can't do that and we're not going to do it.

MR. SCHIEFER: You're asking us to get into an area that we have no authority.

MR. VAN LEEUWEN: You're asking us to stick our necks out. There's nobody going to chop my neck off, I'm only 52 years old.

MR. SCHIEFER: I can't make a motion.

MR. VAN LEEUWEN: Chairman cannot make a motion. I already made the motion.

MR. SCHIEFER: State the motion.

MR. VAN LEEUWEN: That we refer this matter back to the Zoning Board for an interpretation of the zoning law.

MR. KRIEGER: In addition to the area variance previously requested.

MR. SCHIEFER: And also do the two of them at the same time, the area variance as requested.

MR. VAN LEEUWEN: But if you say area variance, you're telling them what you want. I just say interpretation, Mr. Chairman, let's leave it at that.

MR. SCHIEFER: But, all right--

MR. KRIEGER: In addition to the possible question with respect to area variance.

MR. DOWD: And use variance because they have determined it's not an appropriate use. You can refer it for all purposes to the Zoning Board, just so I'm afraid what's going to happen is the Zoning Board of Appeals is going to make an interpretation that it's not, it's not a professional business and therefore it requires a use variance. If you don't send it back for all purposes, they'll send it back to you, back to them for a use variance and it will be back three or four times. That way, if you can refer it to the Zoning Board of Appeals for an interpretation as you wish, area variance, use variance as appropriate, you might save another trip back and forth.

MR. SCHIEFER: You're taking a risk here.

MR. DOWD: I don't want to even do that.

MR. SCHIEFER: Right now we are asking for an interpretation. You're asking us to say hey, this is, you need an area variance. We're not saying that. We don't want to say that. You're asking us to--

MR. DOWD: I'm pretty sure that you'll find if you read the minutes, it's very clear we do need area variances.

MR. VAN LEEUWEN: We can't tell them they need an area variance and so they're saying we're telling them what we're telling them what to do.

MR. EDSALL: Just in the comments and not looking to interfere with the legal process, my recommendation is that you send it for an interpretation and then again once they interpret it, he's either going to need a use or an area variance. There's only two choices.

MR. KRIEGER: Possibly both.

MR. EDSALL: The bottom line is do you really want them to come back to you again and ask for you to authorize a use variance so they have to come back again and tie up the agenda or send it, interpretation and subsequently use and/or area variance.

MR. SCHIEFER: Use and subsequently.

MR. EDSALL: I don't see the need to come.

MR. KRIEGER: Area variance and/or use variance as may then appear to be needed.

MR. EDSALL: As determined by the Zoning Board of Appeals.

MR. SCHIEFER: Refer it up to them so the whole thing, because back and forth, I'm sure you'll be, I hope you'll be back.

MR. DOWD: I do too.

MR. SCHIEFER: After reading this, I have some concerns. Do I have a second to that motion?

MR. PAGANO: I'll second it.

MR. SCHIEFER: Motion has been made and seconded that we send it to the Zoning Board of Appeals for an interpretation and such variances as may be required based on their interpretation. Any discussion? First we need anymore--

MR. VAN LEEUWEN: I think we did enough.

ROLL CALL:

Mr. Pagano	Aye
Mr. VanLeeuwen	Aye
Mr. McCarville	Aye
Mr. Dubaldi	Aye
Mr. Schiefer	Aye

PRESUBMISSION:

Wind in the Willows Site Plan:

Mr. Marty Irwin of Alpine Development Corporation and Calais Guglielmi came before the Board presenting this proposal.

BY MR. IRWIN: This is a proposed start up day care center.

BY MR. SOUKUP: Three to five age?

BY MS. GUGLIELMI: Infant through 12 years.

BY MR. SCHIEFER: This is at 257 Walsh Avenue, New Windsor. This is between 9W and River Road, meets up with the property of Lou Grevas' office and Mark's office.

BY MS. GUGLIELMI: There is a proposed parking for 20 spaces for staff and additional parking for guests and patrons. This is an elevation of some of the items that are on this property. This is part of a playground facility where children can go inside here and they can be inside of a bakery or post office or whatever, and this part right here is this roadway for bikes which goes in a little tunnel and comes out again. This is an elevation and these are my elevations, by the way, of the outdoor puppet theater which is located right here. As I mentioned before, we will have 12 weeks to 12 years old and our hours of operation will be from 6:30 to six.

BY MR. SOUKUP: Is there another building to the left of the house on your property? What is that brown square?

BY MS. GUGLIELMI: This is a barn, yes.

BY MR. SOUKUP: Are you going to use that for anything, storage?

BY MS. GUGLIELMI: Well, not right off. I had planned to do things like drying flowers in it for crafts and maybe some summer things. Would be used as seasonal because we'd have to clean it out, but it would not be for the caring of children.

BY MR. IRWIN: It's a two story wood frame structure that has four sets of hinged garage doors on it to give you a sense of the size of it, dirt floor inside.

BY MS. GUGLIELMI: And there is a circular driveway in the center.

BY MR. LANDER: Gravel now?

BY MS. GUGLIELMI: Paved.

BY MR. IRWIN: It does not have the two parking wings presently on it.

BY MR. SOUKUP: How many children or how many people do you have intended to have on a daily basis?

BY MS. GUGLIELMI: We are required to be licensed by the State of New York of 78 children and we have approximately 18 to 20 staff.

BY MR. MCCARVILLE: How are you going to keep all them little critters on the property?

BY MS. GUGLIELMI: There is a perimeter fencing that would follow the property line up until this point here. This part here would be cut off with the perimeter fence to enclose the parking, the parking is all enclosed. There is interior fencing that will enclose the garden area. There is also some more, another fencing right here with is part of the perimeter fencing that cuts off that, separates this circular drive and this other parking area from the rest of the property which goes right up to the walkway here and --

BY MR. SOUKUP: Are most of your children dropped off by parents or brought in by bus?

BY MS. GUGLIELMI: Most will be dropped off by parents. With the after school program, we will be planning to engage an arrangement with the Newburgh School District which also I think New Windsor Schools for the after school program. The children can be put on the bus at their respective schools and then brought to the children care center and

then picked up at six o'clock or before by their parents when their parents get off work. That is basically the only transportation that we would be able to help provide, even though we are not providing it. But that is the case where children would actually come on the bus. We don't know how many that will be doing that at this time, but we are going to make a petition before the school district for that.

BY MR. LANDER: So that whole parcel is going to be fenced in?

BY MR. MCCARVILLE: That's the old mansion.

BY MS. GUGLIELMI: There is another structure which we will be removing. We do have one willow tree, that goes with our name, it sits sort of under the willow tree is a structure that has a stone foundation and a wood top part, it is a chicken coop and that is just going to be removed.

BY MR. MCCARVILLE: This house has a shingle siding on it, does it not?

BY MR. IRWIN: Homosote, it's been asphalt impregnated and embossed to look like laid up fieldstone that's been applied over horizontal wood siding.

BY MR. VANLEEUEWEN: How old is the house?

BY MR. IRWIN: 125 years old.

BY MR. VANLEEUEWEN: Who owns it now?

BY MR. IRWIN: Estate of Geraldine Carfara (phonetic). She wanted to do housing for the elderly and she died, so her estate is selling it.

BY MR. MCCARVILLE: I think it's a nice use for the building.

BY MR. EDSALL: The biggest question you have is my comment about how you are going to consider it because specifically this use is not recognized and the only use that comes even close is called professional office, so the Board is going to have to make a decision if they believe that is what

this is or whether or not they need a variance.

BY MS. GUGLIELMI: Do you consider us a professional business?

BY MR. VANLEEUEWEN: Yes, I would say so.

BY MR. EDSALL: Zoning says professional office.

BY MR. MCCARVILLE: Who is going to live there, anyone?

BY MS. GUGLIELMI: No.

BY MR. SOUKUP: No caretaker?

BY MS. GUGLIELMI: No.

BY MR. SCHIEFER: It can be a professional business.

BY MR. EDSALL: Do you believe that is what it is?

BY MR. VANLEEUEWEN: It's a business, it's a professional business. You have to have a degree.

BY MS. GUGLIELMI: That's absolutely right. We have to have a license.

BY MR. VANLEEUEWEN: Do you have a degree?

BY MS. GUGLIELMI: Yes. But the staff has to have, we have a licensed nurse practitioner, pediatrician that supervises 12 weeks to three years program, Dr. Martin out of the St. Luke's Hospital, the staff for the infant program are classified as nanny and they are required to have a nursing background. The three to five year old staff, we have a certified teacher, because we have a certified kindergarten and that doesn't come under State Department of Education because kindergarten is not required in the State of New York, so that leaves us out from being a school, and the rest of the staff are required to have a degree.

BY MR. SCHIEFER: Let me ask a question. Does anyone on the Board have a problem with this being a professional business?

BY MR. SOUKUP: I'd be more comfortable with a special use permit rather than a by right use then we could, after a hearing and a plan and we could put any conditions we wanted into it.

BY MR. MCCARVILLE: I am totally comfortable with a professional use myself.

BY MR. EDSALL: The problem with going special permit is that it's not a trailer, it's not a dwelling, it's not a railroad, not bulk storage, not bricks and concrete, not municipal refuse, it's not a public utility so you can't really create your own special use permit so you have --

BY MR. SCHIEFER: I think it's professional business. We have got that you don't need a variance. Can you rationalize that?

BY MR. IRWIN: I have a question. The deed, we haven't surveyed it yet, but the existing deed indicates that it's 1.8 acres. It doesn't say & what. You have to assume at this point 1.800, that's 78,000 and some odd hundred square feet and the bulk use table has a cut off of 80,000 square feet.

BY MR. EDSALL: Which means you will need a variance.

BY MR. MCCARVILLE: For the area variance?

BY MR. SCHIEFER: Yes.

BY MS. GUGLIELMI: What does it mean, unless otherwise designated? There is a comment there.

BY MR. MCCARVILLE: Unless it has a little asterisk some other use, half a reduced area or something unless it says it on there.

BY MR. SCHIEFER: The question was asked what the asterisk means on the otherwise designated on the top of the bulk tables. I feel probably, we probably have to go to the Zoning Board of Appeals for the area.

BY MR. BABCOCK: Where does that say that?

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BY MR. EDSALL: The numbers mean square feet unless there is some other unit shown.

BY MR. VANLEEUEWEN: Have it surveyed, then are you going to be the owner of this, are you going to buy this?

BY MS. GUGLIELMI: Yes, the company will buy it. It is a not for profit corporation.

BY MR. SOUKUP: What is on the triangle on the righthand side?

BY MS. GUGLIELMI: It is our property but it slopes down and there is a lot of trees and we couldn't put parking there.

BY MR. SOUKUP: Did you include that in the 1.8 acres?

BY MR. IRWIN: Well, the deed that have from the sellers shows 1.8 acres.

BY MR. SOUKUP: Including that small piece on the side of the parking?

BY MR. IRWIN: Yes.

BY MR. VANLEEUEWEN: Show that on that drawing as trees.

BY MR. SCHIEFER: If your survey showed you have enough land, if you not you have to go to the Zoning Board of Appeals.

BY MR. VANLEEUEWEN: Poll the Board and see what they think of it.

BY MR. SCHIEFER: So far, I have heard nothing unfavorable.

BY MR. MCCARVILLE: Good use of the property.

BY MR. VANLEEUEWEN: I have no problem.

BY MR. SOUKUP: Good use of the property.

BY MR. LANDER: Yes, good use.

BY MR. DUBALDI: Yes, good use of the property.

BY MR. SCHIEFER: Now, we have a few technical problems to work out, have it surveyed.

BY MR. IRWIN: Maybe we luck out.

BY MR. EDSALL: Just a note they have been meeting in the work sessions with both Mike and Bob Rogers or one of Bob's representatives. They have some hurdles with the building code but they are working directly on meeting the state code because it's a specific use. We are not going to bring that issue up in our review. We are going to leave that for them to resolve. There are some concerns that I am not sure how they are going to solve them.

BY MR. IRWIN: Is this a good time to discuss them?

BY MR. EDSALL: No, because we don't issue building permits.

BY MR. SOUKUP: Does your use of the property involve any other funding sources that you have deadlines to meet?

BY MS. GUGLIELMI: Yes.

BY MR. IRWIN: The funding sources for this, sir, are severalfold. One is equity, another is hopefully New York Job Development Authority, although they usually do industry and manufacturing under the Governor Cuomo's Child Initiative, it will help.

BY MR. SOUKUP: Do you need a conceptual letter from the Board?

BY MR. IRWIN: It would be helpful if we had that.

BY MR. SOUKUP: I am involved in a couple other projects similar to this. Usually the funding agency would like to have an indication from the local municipality if the concept is approved subject to final approval, but they'd appreciate a letter from the Board.

BY MS. GUGLIELMI: And the state licensing would like to see that.

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BY MR. SOUKUP: Concept is approved subject to details and probably a letter to them confirming our opinion.

BY MR. SCHIEFER: Would it be proper to ask Andy to dictate a letter like this and I will sign it?

BY MR. MCCARVILLE: The Board is basically in agreement with the concept.

BY MR. KRIEGER: You can't use concept.

BY MR. EDSALL: Keeping in mind we do need a variance.

BY MS. GUGLIELMI: The Governor's initiative with the Job Development Authority expressly indicates our involvement with manufacturing corporations. We have received a letter of intent of use and endorsement for the project of some corporations that are in New Windsor and in the Newburgh area. MacBeth's Corporation, Hudson Valley Tree Corporation, the Gollop (phonetic) Corporation, American Felt and Filter and Gem Mark (phonetic) Corporation and so on in an effort to indicate to you as more businesses come in, this is a growing need and --

BY MR. MCCARVILLE: Is this an advertisement?

BY MS. GUGLIELMI: No, just letting you know that the businesses --

BY MR. MCCARVILLE: It is a plus to our community is what you are saying.

BY MS. GUGLIELMI: Yes, business and manufacturing community.

BY MR. EDSALL: I don't think if they quite understand what they need they can't get referred to the Zoning Board until they have an application and plan to this Board unless the Board has something up their sleeve. We have explained we need a plan.

BY MR. SCHIEFER: We are going to get a survey when they get the survey then that will be the plan.

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BY MR. BABCOCK: Not just a survey, they need a site plan.

BY MR. IRWIN: Before Calais spent the money, she wanted to have some sense whether you thought it was an appropriate use of the property.

BY MR. EDSALL: If you are looking from some timeframe to get to the Zoning Board of Appeals, we can't send you until we get the plan so I would push whoever is doing the plan for you to get it in.

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OLD BUSINESS:

BY MR. SCHIEFER: New Windsor Planning Board visited the C & R Enterprises on Moores Hill Road, Ian Van der Essen on Route 94, New Windsor Carburetor, Par Three Golf Course and Denhoff on Route 32 on September 5, 1990. We visited those places.

DRAKE, SOMMERS, LOEB, TARSHIS & CATANIA, P.C.

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KEVIN T. DOWD

OF COUNSEL

DONALD H. MCCANN

*N.Y. & FLA. BARS
**N.Y. & D.C. BARS
***N.Y. & CT. BARS

February 7, 1991

Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, NY 12550

RE: Wind in the Willows, Inc.
Site Plan Application
Our File No. 35,528

Dear Members of the Planning Board:

I am writing to you on behalf of Wind in the Willows, Inc. with regard to its application for site plan approval. As you may recall, the applicant appeared before your board on September 12 and again on October 24, 1990 for site plan review of a day care center which the applicant proposes to operate on property located at the corner of Walsh Street and Plympton in the Town of New Windsor.

As you may recall, the property is located in the Planned Industrial District. During your earlier review, you discussed the proposed use of the property, as a day care center, agreeing that such use was a good use of the property. Your Board also discussed the question of whether the proposed use is a professional business use, a use permitted as of right in the Planned Industrial District. Upon being advised of the license requirements to operate the center and of the various professionals who will be employed there, you concluded that the use was in fact a professional business use. However, in light of the bulk requirements imposed on professional business uses, your Board rejected the site plan and referred the applicant to the Zoning Board of Appeals to obtain height, front yard setback and lot area variances. A copy of your notice of disapproval is attached.


The applicant appeared before the Zoning Board of Appeals for three preliminary reviews, the first on November 26, 1990, the second on December 11, 1990 and finally on January 28, 1991.

Members of the Planning Board
February 7, 1991
Page 2

During these meetings, the Zoning Board of Appeals requested various information with regard to traffic and fire safety and voiced their concern with your Board's characterization of the proposed use as a professional business. Without deciding the issue of whether area variances should be granted, the Zoning Board of Appeals ultimately resolved to refer the applicant back to your Board, concluding that your referral to the Zoning Board of Appeals should be for an interpretation of the zoning ordinance.

We believe that you acted properly and were correct in your application of the zoning ordinance in the first instance. We hope that you will affirm your original conclusions and refer the applicant back to the Zoning Board of Appeals for the sole purpose of obtaining area variances. We look forward to appearing before you at your February 27 meeting.

Very truly yours,



RICHARD J. DRAKE

RJD/clh
Enclosure
cc: Ms. Calais Guglielmi
Mr. William Squires
D:f3552811.55

* ~~REVISED~~ 11-26-90

OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR
ORANGE COUNTY, NY

ZBA P.1/1
#1 11-26-90
TABLE

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION BACK TO THE PLANNING BOARD

PLANNING BOARD FILE NUMBER: 90-46

DATE: 30 OCT 1990

APPLICANT: WIND IN THE WILLOWS INC

P.O. BOX 332

NEWBURGH N.Y. 12550

#3 4-22-91
SET UP FOR
PUBLIC HEARING

#4 6-10-91
PUBLIC HEARING

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 17 OCT 1990

FOR ~~(SUDY/REVISION)~~ - SITE PLAN)

LOCATED AT 257 WALSH AVE / INTERSECTION
WITH PLYMPTON ST. ZONE PI

DESCRIPTION OF EXISTING SITE: SEC: 14 BLOCK: 8 LOT: 6

PROPOSED PROFESSIONAL BUSINESS -

DAY CARE CENTER

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

AREA VARIANCES REQUIRED AS NOTED
BELOW

* USE

* #2 FRONT YARD

PLANNING BOARD CHAIRMAN
CARL SCHEPER

<u>REQUIREMENTS</u>		<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>PI</u>	USE <u>A-1</u>		
MIN. LOT AREA	<u>80,000 SF</u>	<u>68 735 net</u>	<u>11,265</u>
MIN. LOT WIDTH	<u>200 FT</u>	<u>275</u>	<u>—</u>
REQ'D FRONT YD	<u>*100</u> <u>100 FT</u>	<u>93</u> <u>89.3</u>	<u>7'</u> <u>10.7</u>
REQ'D SIDE YD.	<u>50 FT</u>	<u>106</u>	<u>—</u>
REQ'D TOTAL SIDE YD.	<u>110 FT</u>	<u>216</u>	<u>—</u>
REQ'D REAR YD.	<u>50 FT</u>	<u>110</u>	<u>—</u>
REQ'D FRONTAGE	<u>N-A</u>	<u>—</u>	<u>—</u>
MAX. BLDG. HT.	<u>4" PER FT = 29'-9"</u>	<u>32'-4"</u>	<u>2'-3" +/-</u>
FLOOR AREA RATIO	<u>0.2</u>	<u>< 0.1</u>	<u>—</u>
MIN. LIVABLE AREA	<u>N-A</u>	<u>—</u>	<u>—</u>
DEV. COVERAGE	<u>N-A</u> %	<u>—</u> %	<u>—</u> %
O/S PARKING SPACES	<u>25</u>	<u>28</u>	<u>—</u>

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:
(914-565-8550) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD
OF APPEALS.

CC: Z.B.A., APPLICANT, P.B. ENGINEER, P.B. FILE



McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.

45 QUASSAICK AVE. (ROUTE 9W)
NEW WINDSOR, NEW YORK 12550

TELEPHONE (914) 562-8640
PORT JERVIS (914) 856-5600

RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.

Licensed in New York,
New Jersey and Pennsylvania

PLANNING BOARD WORK SESSION
RECORD OF APPEARANCE

TOWN OF New Windsor ^{new} P/B # -
WORK SESSION DATE: 17 July 1990
REAPPEARANCE AT W/S REQUESTED: No APPLICANT RESUB.
REQUIRED: Full App
PROJECT NAME: Wind in the Willows.
PROJECT STATUS: NEW OLD
REPRESENTATIVE PRESENT: Mark Trini/Kalai G.
TOWN REPS PRESENT: BLDG INSP. X
FIRE INSP. Rich
ENGINEER X
PLANNER
P/B CHMN.
OTHER (Specify)

ITEMS TO BE ADDRESSED ON RESUBMITTAL:

- Util. Rd. - childcare center
- need plan to reject to ZBA
- Mike B warn re potential cost to meet current code.
- caution re access to each floor



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**PLANNING BOARD WORK SESSION
RECORD OF APPEARANCE**

TOWN OF New Windsor P/B # -
WORK SESSION DATE: 4 Sept 90 APPLICANT RESUB.
REAPPEARANCE AT W/S REQUESTED: Yes-later REQUIRED: Yes-later
PROJECT NAME: Wind in Willows - 257 Walsh Ave
PROJECT STATUS: NEW OLD
REPRESENTATIVE PRESENT: Marty Irwin
TOWN REPS PRESENT: BLDG INSP. Dica
FIRE INSP. Rick
ENGINEER X
PLANNER
P/B CHMN.
OTHER (Specify)

ITEMS TO BE ADDRESSED ON RESUBMITTAL:

PI race
P/B determine if day care center = prof. office
A-1 - Do they meet bulk tank reg's.
possible Presub conf. 9/12
need survey of property



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New Jersey and Pennsylvania

PLANNING BOARD WORK SESSION
RECORD OF APPEARANCE

TOWN OF New Windsor P/B # -
WORK SESSION DATE: 16 Oct 90 APPLICANT RESUB.
REQUIRED:
REAPPEARANCE AT W/S REQUESTED:
PROJECT NAME: Wind in Willows
PROJECT STATUS: NEW OLD
REPRESENTATIVE PRESENT: Bill H
TOWN REPS PRESENT: BLDG INSP. Mhe
FIRE INSP. Rich
ENGINEER
PLANNER
P/B CHMN.
OTHER (Specify)

ITEMS TO BE ADDRESSED ON RESUBMITTAL:

Show 9W * 3 story
signs traffic 12 mos - 12 yrs
detail of fence - 78 kids
net lot area → 2BA 18-20 sa
78 kids - 6³⁰ - 6 PM
pkc ok
Variance - front yd → 2BA (Also Ht)
* reloc fence
* bulk table
* (amp (cu ft)) \$750 escrow

ANDREW S. KRIEGER
ATTORNEY AT LAW
210 QUASSACK AVENUE
SQUARE SHOPPING CENTER, SUITE 3
NEW WINDSOR, NEW YORK 12553
(914) 562-2333

September 13, 1990

Ms. Calais Guglielmi
Wind In The Willows, Inc.
P.O. Box 332
Newburgh, New York 12550

Re: Site Plan

Dear Ms. Gugliemi:

This will confirm the fact that you appeared before the Town of New Windsor Planning Board on September 12, 1990 and that at that appearance you presented to the Board a proposal for use of a certain parcel in New Windsor as a Day Care-type center.

At that conference no formal action was taken, however, you asked the Planning Board for its informal opinion of the intended use of the property.

At that meeting, the Planning Board was polled and each of the six members present indicated that they felt that your proposed use of the property appears to be an appropriate use of the property.

The members of the Planning Board and I, as attorney for the Planning Board, look forward to your submission of a formal application and site plan.

Thank you.

Very truly yours,

ANDREW S. KRIEGER

ASK:mmt

cc: Hon. Carl Schiefer
Chairman, New Windsor Planning Board

ZONING BOARD OF APPEALS
Regular Session

January 28, 1991

7:30 P.M. - ROLL CALL

Motion to adopt the minutes of the 01/14/91 meeting as written.

PRELIMINARY MEETING:

0 BACK

PLANNING
ARD

1. WIND IN THE WILLOWS -SECOND PRELIMINARY - Request for area variances for day care center on Walsh Road in a PI zone. Present: Laura Ewall, Esq., Calais Guglielmi and William Squires.

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RETURN

2. SMALL TOWN LAND - Request for Interpretation and/or variances to permit building lot in an R-4 zone. Present: Donald S. Tracy, Esq. and Keith Williams.

0
RETURN
TABLE

3. TRI-FAM ASSOCS. - Request for use variance for mining operation in connection with proposed development of condominium office not permitted in R-4 zone. Present: John Smitchger.

ET UP
R PUBLIC
HAPPY

4. COHEN, MICHAEL - Request for 10,000 s.f. lot area, 95 ft. lot width and 11.67 ft. building height to construct small shopping center on Route 32 in a C zone. Present: Paul V. Cuomo, P. E.

FORMAL DECISIONS:

- (1) DUFFERS
- (2) DENHOFF

APPROVED

PAT - 565-8550 (o)
562-7107 (w)

TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

JANUARY 28, 1991

MEMBERS PRESENT: RICHARD FENWICK, CHAIRMAN
LAWRENCE TORLEY
DAN KONKOL
TED TANNER
JACK FINNEGAN
JACK BABCOCK
JAMES NUGENT

ALSO PRESENT: DANIEL LUCIA, ESQ., ZBA ATTORNEY
PAT BARNHART, SECRETARY
MICHAEL BABCOCK, BUILDING INSPECTOR
MARK EDSALL, P.E., ZBA ENGINEER

MR. FENWICK: I'd like to call the regular meeting of the Town of New Windsor Zoning Board of Appeals to order. We will postpone the adoption of the minutes since we don't have them. There will be some discussion after the meeting about the minutes.

WIND IN THE WILLOW - SECOND PRELIMINARY

Richard Drake, Esq. came before the Board representing this proposal along with William Squires.

MR. FENWICK: This is a request for area variances for day care center on Walsh Road in a PI zone.

MR. DRAKE: I am going to make the presentation on behalf of the applicant. I hope everyone has received and had an opportunity to review the application and materials that we submitted. I don't intend at this point to go in with the Board in any detail what is in this report and our legal position. We'd really just kind of like to discuss in general principles with the Board. Having read the minutes of the last Board meeting, we know the concerns that the Board has about the application and the questions, whether it is a Zoning Board of Appeals area variance, whether it's a use variance or whether it's both. I recognize the concerns the Board has and as you see for the application before you, we are asking the Board to consider this as a straight area variance.

In order to come off of some of the problems my applicant finds itself in a sort of in the horns of a dilemma having appeared before the Planning Board and the Planning Board was very comfortable with the designation of this use as a professional business but the site plan required certain area variances which required the applicant to come before the Board. All of the issues which were raised by the Board are obviously very legitimate and this is the Appeal Court in the town. I would like to suggest to the Board that one possible way of handling this without setting a precedent would be not to reach the issue. Traditionally, the Court of Appeals only treats issues which are asked of them to be heard and do nothing beyond the scope of the appeal. This Board I believe based upon the materials that we have submitted based upon the preliminary indications that the Planning Board has made can address this as an area variance. It will not set a precedent because this Board will not have considered any of the issues which were raised in the prior meeting. That is to say the variance that would be granted would be simply an area variance. The Planning Board would then perform its normal function of having the site plan review. At that time, it would consider a lot of the collateral issues which I think worry this Board and I think the application would then go forward. There would be no precedent set in the Town of New Windsor because the issue would never have been handled by this Board and this Board asks the ultimate interpretation of the zoning law.

Frankly, I have been in this a long time and in my opinion, we cannot meet the test for use variance. There's nothing about this property which would qualify it as a, for a use variance. We would never in my opinion be able to substantiate the test that the State law requires. It is not to say that this Board

could not grant a use variance because as you all know, most use variances fall short of the test but if there is no public opposition if the use is desirable, if the community wants it, if it presents a rateable, many times use variances are granted in which the applicant does not meet the test but I'd be less than candid with this Board if I didn't say I don't think we can meet the test here. So, that we really need the Board to take a narrow interpretation of the application and look at it as an area variance.

We have given, I think very substantial arguments citing the State law, the public policy of the State that day-care centers are a desirable use in this public policy of the State to promote them. It appears that the Planning Board thought it was a good use for the property. And they were not troubled and I would like to ask this Board to consider this application as an area variance.

MR. FENWICK: Let me ask you this, Mr. Drake, do you have the fire report from the fire, Town Fire Inspector?

MR. DRAKE: I don't know.

MR. TORLEY: The one dated 30 October, '90.

MR. FENWICK: This has come into our hands and I know you wished to be on the agenda the last time we didn't at that time we didn't have everything we requested from you in our hands in time enough to be put on the agenda. Since then, and probably of that afternoon, maybe the Thursday before the last meeting, this came into our hands at the last meeting. Everyone is given a copy of everything that you have presented to us. We have at this time and one of the things in here is public welfare. We have the interest of course it's to the Town Planning Board from the Town Fire Inspector dated 30 October, 1990. Subject is Wind in the Willows, Incorporated Site Plan. They refer to Planning Board Number PB-90-46 dated 10 October, 1990, Fire Prevention Number FPS-90-097.

"...A review of the above referenced subject site plan was conducted on 30 October, 1990.

The concept of this site plan is acceptable, however, it is the opinion of this writer that this building is a three (3) story structure of type 5b construction. Under Title 9 NYCrr, occupancy groups C6.1 and C6.2 are not permitted to occupy a three (3)

story, type 5b structure.

This site plan is rejected..."

I don't know how we can proceed on this. Everything else becomes moot at this point.

MR. SQUIRES: I have a disagreement with the statement that it's a three story building. I think the fact that this might have been presented, I don't know whether they presented that to you or not, Mike, the fact that the building is partially in the ground, the rear of the building is fully exposed, front of the building is totally in the ground with a transition of topo along the side. Taking an average height and using the requirements of the New York State Rules and Regulations, I found it be within the constraints of a two-story building.

MR. FENWICK: I am not going to speak for the Members of this Board. I don't see how I can overrule what the Town Fire Inspector has said. I don't in other words if it would seem to me if you have an argument, you have an argument with him. It says this site plan is rejected. Every other, it just doesn't apply, I don't know what we can act on. We are going to say if you are granted the variance, we'd be overriding what the Fire Inspector has said right here.

MR. DRAKE: That's not correct. You would not be overriding anybody. If you were to grant this variance all that does is permits the applicant to go back before the Planning Board for site plan review. If the site plan review is not going to be successful, the Planning Board is going to turn it down. This Board is not being, we are not asking anyone here for a site plan review tonight.

MR. FENWICK: We are looking at item right here where it said will not be otherwise detrimental to the public welfare when we grant a variance that is one of the things we are looking at, forgetting the site plan or whatever. We have this letter in front of us.

MR. DRAKE: Okay, but I think that the jurisdiction and the function of a Zoning Board is to make sure that the variance, if it's granted, meets and conforms with the overall purpose with the zoning as adopted by the Town Board. That it doesn't violate public policy of the town. It is not a site plan that we are asking for or talking about. And this is really a question that has

to be thrashed out between the Planning Board and the applicant. It may be true that if this man is correct, we are obviously not going to get our approval. That is not what we are asking for here and that is not--you are not being asked to approve anything other than a variance, an area variance. You are not condoning the site plan. You are not lending your support to the site plan. You are merely being asked to vary the density and bulk requirement of the town zoning ordinance.

MR. NUGENT: We don't act on site plans, we are acting on a variance, right?

MR. TORLEY: There's something else I am afraid I must disagree with you, with your statements.

MR. FENWICK: That's a public welfare, everything we look at is that.

MR. TORLEY: I must disagree with your statement that we need not make an interpretation. I think we must where this is a private business or not, whether this is a private business or not and I find it very difficult to say that a day-care center though they are desperately needed should be interpreted as a private business being the best and most closely--

MR. DRAKE: Professional business.

MR. TORLEY: Sorry, as being the closest approximation to what is in our zoning code. You are going to convince me that your activity should be interpreted as a professional business rather than a private school which is listed in our zoning code in several areas and by your statement to me, you're saying this is a school. When you have a certified kindergarten program, that is a school.

MR. DRAKE: Well--

MR. FENWICK: You're entitled to a public hearing and if you want to go to a public hearing, I won't prevent you. And if someone on this Board makes a motion to have a public hearing--

MR. DRAKE: I don't want my client to go to a public hearing if the Board is not at least of the opinion that the area variance is what is required. If first of all we can't even get to this Board on interpretation because no one's asked us to give an interpretation--if the Planning Board--we'd have to go back to the Planning Board, ask them to turn us down, send us back us back

here for an interpretation. We then come back here and ask for an interpretation. We can't walk in here and say give us an interpretation. It creates a serious problem for my clients. The delays are costly. We have a contract purchaser who is getting impatient with us and rightfully so.

MR. TORLEY: You can't ask us if you say we should ignore what you are going to do and just give you an area variance because--

MR. DRAKE: That is the Planning Board's job to make a determination.

MR. TORLEY: No because from what you have described, the activities that you have described, the activities that you have described what you plan to use the building for is to me is not something that meets under the code.

MR. FENWICK: I asked you to read Mr. Drake's letter and check on the validity of it, what he had to say. Did you do that?

MR. LUCIA: I have done that. Dick and I spoke last week. What he's laid out there is a good presentation on behalf of his client and I have no argument with it but the issues still faces this Board if you feel that an interpretation and/or a use variance is necessary, we do not now have a proper basis upon which to make an interpretation so I suppose the proper avenue of resolving that is to remand the matter to the Planning Board and make them aware when the application came in although it was only on the area variance grounds, we felt there was an issue with regards to interpretation and we'd like them to refer it to us for interpretation, specifically. We have no power in and of ourselves to interpret this unless it's brought to us by some other agency or Board of the town.

MR. TORLEY: We have to send the applicant back even though we know he's coming back for this?

MR. LUCIA: Exactly. The applicant has an absolute right. He was referred to this Board for an area variance. If he chooses only to pursue the area variance, we must handle the application and give him a public hearing on that issue but that may not be a complete issue to the problems but it seems to be self defeating to keep it on a piecemeal basis. It has not met the jurisdiction requirements to come to this Board for an interpretation so we'd have to

remand it back to the Planning Board.

MR. DRAKE: That's the dilemma that my client finds itself on is being bounced between two Boards. That is why I pointed out to the Board in the beginning as I read the minutes of the last meeting, struck me that the Board was genuinely concerned about setting a precedent by making an interpretation that this was, if it was granted it would therefore be permitted in other parts of the town. That is why I suggested to the Board you don't have to get to that issue because if you accept the Planning Board's decision that they're comfortable and I take it there was a unanimous decision by the Board that they were comfortable that this is a professional business, you're not setting a precedent. If it ever came up again, you'd be totally free to take any position you want to. That was the main reason that I made that presentation in the beginning.

MR. TORLEY: You're asking us to ignore plain data that we have in front of us.

MR. DRAKE: I am only asking you to consider what the Planning Board sent you, i.e. an area variance.

MR. LUCIA: It obviously is the issue with Bobbv Rogers' report if we are going to remand it to the Planning Board since there appears to be a clear health and safety issue, I'd say we have this report from the planning inspector maybe you better handle this before you send it back here for anything because that's something that is more tied up with the site plan and at some point, you have to get by that issue.

MR. DRAKE: But Dan, we have a chicken and the egg. If we go back to the Planning Board, they are going to say why should we go through site plan review supposing the Zoning Board of Appeals turns you down on the area variance, the conditional approval that we have to have to meet the substantive issues that you're raising or to get by this Board.

MR. LUCIA: I think the problem is since it's a health and safety issue, the danger is you come here for whatever application you make to this Board and they say contingent upon your getting any decision contingent upon your establishing a two-story building.

MR. DRAKE: This presents a new issue that we have to deal with as to whether even if you said I accept your interpretation we're content to go with the area

variance, we still have to resolve this issue before we go anywheres but my problem is that if we go back to the Planning Board and say the Zoning Board didn't accept your initial preliminary interpretation, what are they going to do in terms of and what is their reaction going to be in terms of they have to make that preliminary determination on every single application that comes before them. And this is a matter of being challenged as to whether or not they are correct by a fellow Board in the same town. That puts the applicant in a very precarious position. Every use in every zone is generic so there has to be some interpretation. You cannot itemize every single use in the world and put it in your zoning ordinance. That's why it's written this way, that's why there's a Zoning Board.

MR. KONKOL: Even if we forget about the interpretation, the fact that it's somewhat ambiguous as to whether professional organization or a school which it's being referred to, compared to the Waldorf School, the biggest thing is public safety. We have a fire report cut and dry, it's rejected. We haven't even addressed the safety of the 73 kids that are going to be in there and their parents bringing them and the traffic conditions. We do have a traffic study. It's a very hazardous place. It doesn't belong there. I mean first of all, if it's a school, it doesn't belong in a PI zone and there are zones in the town, commercial, neighborhood commercial, that's where the schools belong, not in a PI zone. So forgetting about the fact that you're only looking for an area variance, it doesn't qualify and somewhere along the line, it's going to surface. You can go to the Planning Board, Fire Inspector and say you're going to fix it up but you are going to be a long time going down the line there.

MR. DRAKE: But that's the really the--if this is in the wrong zone, if the traffic is bad, if the parking--

MR. KONKOL: This Board is concerned with health, safety and welfare and we have it right there in black and white, the Fire Inspector rejected it. As far as I am concerned, we are beating a dead horse to death.

MR. DRAKE: This is the first time I have seen this.

MR. SQUIRES: I think he's rejecting it on erroneous information.

MR. TORLEY: The applicant's right that although health and safety by our regulations have got to be the primary concern for all of us that the actual site plan

details belong in the Planning Board. I think we have all seen that from that rejection from the Fire Inspector that it would have to be repaired before anything could happen but I am just trying to find some way that we can come to a resolution of the issue without ping ponging applicants between Boards.

MR. FENWICK: I'll take the Board if somebody wants to set-up a motion for a public hearing, I'll take the motion on what their application is.

MR. NUGENT: On an area variance.

MR. FENWICK: Just exactly what we are looking at here.

MR. TORLEY: If you set it up for a public hearing, you're asking us to ignore what we see.

MR. LUCIA: If we don't resolve it, we don't want to grant the applicant his area variance assuming the Board is in favor of them subject to establishing interpretation issue. That is why we have preliminaries, let's resolve it now before we make that motion.

MR. DRAKE: We can't accept that.

MR. LUCIA: I understand. I don't think you want to make the motion. Let's hash out the interpretation issue whether or not you feel this is something you feel to send back to the Planning Board to have properly referred here or maybe you accept Mr. Drake's analysis as laid out in his memorandum that maybe this is not something we want to pass on.

MR. TANNER: I'd hate to see it have to go back to the Planning Board but I don't see any other way around it. We have to cover whether this is a professional business or whether it's a school and it's not the Planning Board's jurisdiction to say yes, we think it's this or we think it's that. That's really the job of this Board to do and I think you have to go back to them and have them refer it to us.

MR. DRAKE: Well, I have been involved with Board's for a long time. Actually, this Board interprets the zoning ordinance when it's requested to do so. The Planning Board makes that type of preliminary interpretation on every single site plan that comes before them. They have to, they have to determine if it's in the correct zone, if it's correct use, if it's not specifically mentioned and your ordinance tends to be very specific. If it's not specifically mentioned,

they have to satisfy themselves that it's within the generic term and in this case they did.

MR. TORLEY: The exceeded, I disagree with that.

MR. DRAKE: You disagree, what you're saying the Planning Board was erroneous in doing that, you're not disagreeing on what I said?

MR. TORLEY: Correct.

MR. DRAKE: You're saying the Planning Board made a mistake?

MR. TORLEY: They were in error.

MR. DRAKE: That's the same thing but all I am saying is that it puts the applicant in a very funny position. To go in and get a unanimous decision by the Planning Board and to come to the Zoning Board and be told that the Planning Board was wrong.

MR. TORLEY: May I ask our lawyer one thing? Dan, is it an acceptable alternative to the delays of going back to the Planning Board, having them rescheduled for a hearing and come back again. Can the Building Inspector site rejection on that grounds without them having to go back to the Planning Board?

MR. LUCIA: We can take an interpretation under 4833A, a request of an official Board or agency. Mike is an official, I suppose he could request an interpretation, is he so chooses.

MR. DRAKE: But this is a site plan, right, and the preliminary jurisdiction is with the Planning Board, not with the Building Inspector.

MR. M. BABCOCK: I refer building permits as far as building permits and the building permit application, the Planning Board must refer site plan.

MR. TORLEY: What I'm attempting to do is see if we can expedite the process without having to ping pong you back and forth between the Boards but I guess we are stuck.

MR. J. BABCOCK: Mr. Drake, why in this building, why does your client, why are they so strong about putting that type of operation in this building when there's so many--I was very boisterous at the last hearing over health and safety issues because I think that is my

whole life as volunteer fireman, okay, and my concern with it, the amount of people, children and cars and we have studies, we have the Fire Inspector who's against it. We have no real interpretation of the amount of stories, it's one, two or three. I know the building, I have been there on a fire. I know the problems we had with that particular building. There's buildings vacant all over town. There's one on 94 which we told the young lady there at the first preliminary hearing is vacant, all set-up for that type of operation. Why this building? Why are they so strong against, about putting it in this location when they know that all the agencies here have a problem with it.

MR. DRAKE: Well, I don't think that they knew that when they signed the contract.

MR. J. BABCOCK: She's very well versed on what's required, I beg your pardon. She's very well versed. I sat with Mr. Rogers and he explained to me everything that he sent some architects, I forget the fella's name, he was supposed to give him information back, they didn't get it back. He said, she said, they said, we get back here the same thing, we didn't have enough information. Now we're here again tonight and the same thing like Dan said, we are beating a dead horse to death. You say it's not our jurisdiction, health and safety, where's the driveways going, where's this going, how many story building. I think it's in order for me to vote on an area variance. I have to be clear in my mind and vote if I vote for an area variance, if this goes through and they do have a day-care center in my heart I know I voted in the right way that nobody is going to get hurt in case of a fire and an emergency in this building.

MR. DRAKE: The only thing that I can suggest to you is if the entire Planning Board thought it was okay, my client could be forgiven for thinking it was an okay site too, okay, I mean I think that you get the point is there's no point in getting upset, it's not the client, the clients picked the property. It was a desirable site. We listed a number of reasons why this application, this is a desirable site for it, for this use. Now, she came in here asking for a simple area variance, it looked to us like it was no problem.

MR. J. BABCOCK: First meeting wasn't just a simple area variance.

MR. DRAKE: Came here expecting that the only thing that was needed was an area variance because that is what the Planning Board told her.

MR. FENWICK: I think the Planning Board in my opinion they fired it in and fired it out real quick. We have an awful lot of evidence or statements that they didn't have in their hands since it just came to light two weeks ago and their decision, their concept was yes, it's a good idea and that is exactly what we're working on here. I don't think there's anybody here that thinks it's not a good idea.

MR. DRAKE: I was involved with a Planning Board for 25 years on Dan's side of the table. It's common if there's no problem, they need an area variance, you shoot the applicant off to the Zoning Board to get that detail out of the way. If you can't get that detail out of the way, there's no point in proceeding. Then all of the other information that you are now eluding to, fire, traffic, safety, parking, architectural review, SEQRA, those issues are then determined by the Planning Board in the normal site plan process and that takes months.

MR. NUGENT: No, it doesn't.

MR. J. BABCOCK: You're 50% correct. You're right, it is their function but the function of this Board to grant a variance is to look at the health and safety issues.

MR. DRAKE: I am not asking you not to. All I am saying to you is that I thought that the Board in reading the last minutes, the Board had some concerns about issues like precedent and those issues.

MR. KONKOL: The first meeting, Mr. Drake the young lady came in and when we asked for different information, there was even reference to your letter which was not even in the file here.

MR. DRAKE: That's right, I know.

MR. KONKOL: We asked for more information. We asked for traffic study, fire report and then again, I think she came in a second time.

MR. FENWICK: This is actually the third preliminary. An attorney from your office, Ewall, Ms. Ewall, she was there.

MR. DRAKE: She is here.

MR. KONKOL: Let's stand corrected, this is the third meeting now and what we are trying to tell you and your

client that the whole concept is very nice but we question whether it belongs in this piece of property. I was down there today. I took this afternoon off and I went down there six times. I crossed 9W at the traffic light going east, came down, went up the road, very nice narrow little road, had to pull over to let another car pass me. I went out Ledyard (phonetic) Street to 9W. It took me five minutes to make a left hand turn south because of the traffic. Now, I came up and made another turn down again had to kind of dodge traffic, took my time coming around. This time, I went down John Street coming off of that, that's a thrill, make a turn, I had to cross the old bridge, go up to Devo Place, come down 9W again. This time I made a left on Ledyard Avenue and came out onto the street, had to pull over to let somebody else go by, got out to Walshes Road and then there is two tractor trailers full of oil coming up, had to wait for them. What are you going to do in a peak time in the morning when say 50 mothers are frantically going to go to work. They are going to drop their kids off, they are going to go here and there. That road is bad.

MR. DRAKE: I am not suggesting to the Board that all these issues do not have to be answered and resolved to the satisfaction of the Board. I am just saving that to do a traffic study now for example to get a variance from this Board, we are going to have to do that traffic study for the Planning Board.

MR. FENWICK: I have a traffic study.

MR. DRAKE: But these issues are going to have to be faced at the site plan level.

MR. KONKOL: It goes back to the Planning Board and sort of rubber stamping this unanimously as it is a good place for the site. I don't think they looked at it and I stand on the record that in your record here it indicates it's a school, it's not a professional business and a school doesn't belong there.

MR. TORLEY: A school there would require a use variance.

MR. KONKOL: Yes, it would.

MR. DRAKE: Why do you think it's a school?

MR. KONKOL: You say it in your own letter here that it is copied after the Waldorf School and we are going to have pre-nursery children from three weeks to three years.

MR. DRAKE: That is philosophy but that is the name of the particular underlining philosophical approach that they use in day-care, it's not a school.

MR. TORLEY: On your page 6 line 157 or 156 for the five year olds there will be a certified kindergarten program. That's a school in, to my mind.

MR. NUGENT: That's not in issue whether it's a school or whether it is an area variance.

MR. FENWICK: Right now we have an area variance before us that's what we are looking at, we are looking at an area variance. That is what was sent to us by the Planning Board. That is what we are addressing right now as an area variance.

MR. TORLEY: I could not vote on that appropriately without having the other items settled first. Would it be appropriate to move this to be referred back to the Planning Board?

MR. LUCIA: If that's the feeling of the Board.

MR. KONKOL: I think that's where it belongs.

MR. LUCIA: I happened to be at the Planning Board meeting the night Ms. Guglielmi came in and you probably spent no more than two or three minutes presenting the entire thing to the Planning Board that night. This would have been October, late October.

MS. GUGLIELMI: That would have been the second meeting. First meeting was much longer.

MR. LUCIA: Basically, at that second meeting, your entire presentation was for the purpose of getting referral to this Board on the area variance.

MS. GUGLIELMI: No. Matter of fact, the purpose of that meeting was them to see the site plan done by Grevas & Hildreth.

MR. LUCIA: And the end result was they referred you here for an area variance?

MS. GUGLIELMI: Yes.

MR. LUCIA: It was very brief presentation. I am not sure that the Planning Board really did deal with the interpretation. They really only surfaced when it came here. Traffic and interpretation issues are not

before this Board. So, a lot of times the Planning Boards early on just review pro forma for purposes of getting it to the Zoning Board.

MR. DRAKE: So what do you want the applicant to go ask for, an interpretation at the Planning Board or ask for a total turndown.

MR. LUCIA: That's got to be this Boards feeling on how they want to send it back to you, do you want to send it back for a narrow or send it back saying we think there's an interpretation issue? Would you refer it back to us for an interpretation of the use and/or use variance as well as the area variance?

MR. TORLEY: I'd like to make it as broad as possible. I'll veild to your expertise what would be the appropriate way to get the whole issue settled. What would be the appropriate referral?

MR. LUCIA: It has to be how the Board members feel. You either can send it back strictly saying we feel it's an interpretation issue, we'd like if referred back on that, we'll send it back for interpretation or use variance.

MR. NUGENT: No matter what we do, it's got to go back to them anyway.

MR. LUCIA: Unless the applicant chooses to proceed on a narrow area variance issue.

MR. DRAKE: It has to go back anyway.

MR. NUGENT: No matter what, it has to go back to the Planning Board.

MR. LUCIA: Correct.

MR. DRAKE: If we don't treat the area variance, we have to go back to the Planning Board and say we need something else, a different type of relief.

MR. NUGENT: I have no problem with dealing strictly with an area variance. I have no problem with taking that up for a vote.

MR. FENWICK: Sending it to a public hearing.

MR. NUGENT: Yes and let the Planning Board handle the rest of it and send a nice letter to them and let them handle it.

MR. FENWICK: Are you making a motion to set them up for a public hearing?

MR. NUGENT: I will.

MR. FENWICK: Do you want to review the application one more time?

MR. NUGENT: I make the motion based on this application right here.

MR. DRAKE: Is this the application before the Board?

MR. FENWICK: There's been some corrections.

MR. J. BABCOCK: The ones that are penciled in, Mike, did you do that?

MR. FENWICK: I did that. There were just some corrections over straightening the lines out, I believe.

MR. M. BABCOCK: Yes, the difference between the first application and this application is that it was decided that they needed two front yards and that was by their applicant, Bill Squires apparently when we made the application out, it needed to be 100 so they needed, they have John Street there was only 93 and the other one is 89, they need 100 on each one so that's the only difference.

MR. SQUIRES: If you remember when the application first came in, we had one front yard variance. That is right. Originally, it was one front yard variance and at the time I first appeared before you, I noted to you that there was, there should have been two front yard variances. That was a change that affected the application.

MR. M. BABCOCK: And that is the only change so they need a lot area, two front yards and a maximum building height.

MR. SQUIRES: That is correct.

MR. J. BABCOCK: What is the building height?

MR. M. BABCOCK: Thirty-two (32) feet.

MR. J. BABCOCK: Has that been determined?

MR. M. BABCOCK: That was supplied by their surveyor. Two feet five inches.

MR. SQUIRES: What is required based on 4 inches per foot was 29 foot 9, what is measured was 32 foot by the surveyor and that is really applicable whether it was measured off Walsh Avenue or Clinton Street.

MR. FENWICK: Mr. Drake, I have this one you're welcome to it.

MR. M. BABCOCK: I'm going strictly by what their surveyor is submitting to us on their site plan.

MR. KONKOL: Tall building.

MR. LUCIA: I think the area variance application before the Board is the one dated January 4th, 1991 as supplemented only by a subsequent verification by the State that the correct status of it because there were two separate applications by the applicant.

MR. SQUIRES: One comment I'd like to make is that this building being over 100 years old has all of those conditions in existence prior to the establishment of the zoning in this town.

MR. TORLEY: I think the two foot 3 inch height variance is the least of your problems.

MR. DRAKE: I would think so.

MR. M. BABCOCK: I just was to note one thing for the Board that these variances that the applicant is seeking right now are based on professional business use, okay, so if the use is changed from a professional business, these area variances also might be changed.

MR. J. BABCOCK: That is why I don't know how we can go ahead and vote for, have a public hearing on a variance when we don't know what the hell this thing is, is it a professional, is it, what are we going by, what Mike says.

MR. TANNER: I think I agree with you.

MR. J. BABCOCK: We are going by what Mike said because someone said as far as we're concerned, this is a professional use. Someone else said. What is it, what am I voting on, what will I be voting on? Am I voting on professional use, am I voting on a school, what is it now each thing has different criteria which it has to meet. I don't know how we can vote on an area variance when we haven't established what it is, what is the use. I can't.

MR. KONKOL: I think in fairness to your client, you can get the feeling of this Board.

MR. DRAKE: I have the feeling very clearly.

MR. KONKOL: You're going to have to go back to the Planning Board and get an interpretation.

MR. DRAKE: I feel that setting us up for a public hearing I thought the Board was, I didn't realize the Board was so opposed to the application when I came in here tonight as it obviously is.

MR. KONKOL: You can see why there are facts that are ambiguous to what it is, safety, that Fire Inspector's report is enough to say go on home and do your homework. We shouldn't even be listening to it right now.

MR. NUGENT: I have to ask a dumb question. Where did I get this from? Where did this come from, the denial?

MR. FENWICK: Come from the Planning Board.

MR. NUGENT: Based on what?

MR. FENWICK: What they are calling a professional building.

MR. NUGENT: Right, why are we beating it to death if that is what they said, it's fine.

MR. TORLEY: But we don't have to agree with them and I cannot ignore--

MR. NUGENT: The man is here looking for a variance. I don't care if the building is on top of Mt. Beacon. He needs a variance. We are not to look at all the other stuff.

MR. J. BABCOCK: Based on what, what are you going to base the variance on?

MR. NUGENT: On this, that's in front of me.

MR. J. BABCOCK: Is that the use that's in that zone?

MR. NUGENT: I don't know.

MR. J. BABCOCK: I don't know either. How are you going to vote on it if you don't know.

MR. FENWICK: I am going to say right now I'll get back

to it and I'll defer to our attorney. I'm going to have to agree with Jim, they have made it a use, they have established a use and Mr. Drake has addressed that in his notes and what not and his letter to this Board. I'm going to go to the attorney. They have said this is, they called it a professional use. They called it a professional business and I'll have to go along with what you said in your letter. They kind of established and they kind of interpreted what a professional business is. There is nothing there that says there's lawyers, doctors or anything else. It says professional business so it's up to them to interpret what a professional business is. I don't know whether that is right or wrong but that's what it looks like to me. What you have said it's a generic term professional business and it's up to them to say yes, it's a professional business, they have done that.

MR. J. BABCOCK: On a two minute presentation.

MR. KONKOL: If you feel their interpretation is wrong, I think it should go back to them with that opinion.

MR. LUCIA: That certainly can be this Board's position on it. It's up to the Board. As we talked about it before the meeting before the Planning Board was fairly briefed, you don't think anybody in any great detail ever analyzed whether or not this was in fact a professional business use. They basically sent it onto the Zoning Board for the area variance. We have seen the issue, we are entitled, as Mr. Drake is urging you to do to ignore it and we would be within our rights to do that if that is the feeling of the Board. However, the Board need not ignore it so it really comes down to your feeling as a Board.

MR. DRAKE: I don't really think Dan it's a question of ignoring it. I think the Planning Board didn't ask you to address it.

MR. LUCIA: Precisely.

MR. DRAKE: But Mr. Krieger was at the Planning Board meeting, was he not?

MR. LUCIA: That's correct.

MR. DRAKE: What happens if we go back to the Planning Board and they were very satisfied with our interpretation that this is a professional business. What happens to us then?

MR. LUCIA: They will remand you for the area variance.

MR. DRAKE: What happens if we come back here--

MR. TORLEY: You have said that we may have the right to ignore the issue or not to take it up but my conscience won't let me do that. I see something in front of me that gives me great reservation of kid's safety and health of kids for something that is a school.

MR. DRAKE: I think the Planning Board of the Town of New Windsor is composed of very serious minded men who are very concerned about those issues. It's their role to be concerned about those issues and address those issues, public health, safety and welfare, traffic, zoning, parking, fire.

MR. FENWICK: We are just kind of again beating a dead horse. Do I have a second for the motion to set this up for a public hearing and if I don't, do I have another motion to send this to the Planning Board?

MR. TORLEY: I have to move to refer it back to the Planning Board with our suggestions and comments.

MR. KONKOL: I second that.

MR. TORLEY: I don't know if I can do that with a motion on the floor.

MR. LUCIA: We have no second on the first motion.

MR. KONKOL: Let Dan go back with the details. Dan, also I'd like you to get an interpretation of this professional business because in Mr. Drake's letter here it says it's a non-profit organization and I haven't seen to many professional lawyers or doctors or dentists that work for nothing so I'm a little bit concerned there.

MR. LUCIA: Mr. Drake says a lot of these uses in the ordinance are generic type uses, you probably have to allow them some flexibility as to whether or not it's for profit or not for profit business. If it is a business type office but the issue the Board has trouble with is whether this is a professional business as opposed to a school or a day-care center.

MR. DRAKE: It's a day-care center, no question about that.

MR. TORLEY: Given that, we have x y z criteria for the Zoning Board.

MR. FENWICK: Let's get going. Can I have a roll call on this motion?

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. J. Babcock	Aye
Mr. Konkol	Aye
Mr. Nugent	Aye
Mr. Tanner	Aye
Mr. Fenwick	Aye

MR. DRAKE: Thank you very much.

MR. J. BABCOCK: I have to go to a School Board meeting so I have to leave now and I'd just like to say that I've enjoyed working with everyone here.

SMALL TOWN LAND

Donald S. Tracy Esq. Came before the Board representing this proposal.

MR. FENWICK: This is a request for interpretation and/or variances to permit building lot in an R-4 zone.

MR. TRACY: This matter is basically before the Zoning Board of Appeals for a dual application. One is for an interpretation as to whether or not this particular lot fits under a section of the zoning ordinance and in the alternative, if this Board finds it does not, it's here for a variance of lot bulk and lot width, complying with all other requirements of the R-4 zone. What happened by way of history in this particular case, back in 1974, when the Town Board accepted the streets in that subdivision for dedication, they did not accept this piece of land. The land then became a lot of record because it was picked up and put on the tax map by the Town of Orange. The county of course then levied taxes which were not paid by anyone because the developer had gone and some guy who I guess we would refer to in municipal terminology as a tax shark came in and bought it. He subsequently sold it to the present owner, who has continued to pay taxes on it. We applied to the Building Inspector for a building permit. The Building Inspector said he didn't think he could give a permit because the property is a street.

We contend that no, the property is not a street because case law hold that even a change in ownership revokes an offer of dedication. However, further case law holds that where you commence an action under Article 15, Real Property Tax Law, to revoke dedication, it suffices and there are Court of Appeals cases on this. So, we initially filed an Article 78 proceeding with the Building Inspector. The court in that case and simultaneously therewith since there was no authority for holding that you could successfully revoke claims by an Article 78 proceeding, we subsequently almost simultaneously filed an action of the Article 15 of the Real Property Law to borrow the claim of the municipality that it was a street or that the municipality had any claim to it. The first case, the judge said that he wasn't going to order the Building Inspector to issue a permit because it hadn't been determined that it wasn't a street and he held that matter was not before him. I re-argued that case and said the matter certainly is before you just because it's not called an

ZONING BOARD OF APPEALS
November 26, 1990

AGENDA:

7:30 p.m. - ROLL CALL

Motion to accept minutes of 10/22/90 meeting as written.

PRELIMINARY MEETING:

ET UP FOR
PUBLIC HEARING 1. MANS, LORENS - Request for area variance to construct garage in front yard of property located on Shore Drive (Sec 48-14[4]- Accessory Buildings not allowed in front yard) in R-4 zone.

ET UP FOR
PUBLIC HEARING 2. LUGO, PEDRO - Second Preliminary Meeting - Request for use and ~~4,500~~ s.f. area variance to construct residential dwelling in PI zone on Mertes Lane. Lot AREA - Lot WIDTH - SIDE YARD - BLD. HEIGHT
29,208 80' 18' 18' 6"

TABLE 3. WIND IN THE WILLOWS - Referred by Planning Board for (1) 11,265 s.f. lot area, (2) 10.7 ft. front yard and (3) 2 ft. 3 in. building height variances to construct day care center located at 257 Walsh Avenue in a PI zone. Present: Ms. Calais Guglielmi & William Squires, P.E.

PUBLIC HEARING:

PROVED 4. BENGHA, JOSEPH - Public Hearing adjourned from 10/22/90. Request for 11 ft. frontyard to construct addition incl. deck at 17 Valley View Drive in Beaver Dam Lake - R-4 zone.

PROVED 5. ROSE/RUGGIERO - Request for 1.5 ft. street frontage variance to construct single-family residence located on east side of Jackson Avenue in R-1 zone. Present: Applicant Paul Ruggiero.

PROVED 6. MC GUINNESS, MICHAEL - Request for 4 ft. 6 in. sideyard variance to replace deck located at 205 Lake Road in an R-4 zone.

FORMAL DECISIONS:

- (1) DI DONATO
- (2) BENGHA
- (3) HAIGHT

NEXT AGENDA

PAT - 565-8550 (O)
562-7107 (H)

INTER OFFICE CORRESPONDENCE

TO: Town Planning Board

FROM: Town Fire Inspector

DATE: 30 October 1990

SUBJECT: Wind in the Willows, Inc. Site Plan (Walsh Ave.)

PLANNING BOARD REFERENCE NUMBER: PB-90-46

DATED: 18 October 1990

FIRE PREVENTION REFERENCE NUMBER: FPS-90-097

A review of the above referenced subject site plan was conducted on 30 October 1990.

The concept of this site plan is acceptable, however, it is the opinion of this writer that this building is a three (3) story structure of type 5b construction. Under Title 9 NYCRR, occupancy groups C6.1 and C6.2 are not permitted to occupy a three (3) story, type 5b structure.

This site plan is rejected.

PLANS DATED: 17 October 1990.

Robert F. Rodgers
Robert F. Rodgers, CCA
Fire Inspector

RR:mr
Att.

✓
cc: H.E.
Calais
Hildreth

OCT 18 1930

90-46

A01-593-09

Orig.

10-19-30

BUILDING INSPECTOR, PLANNING BOARD ENGINEER, FIRE INSPECTOR, SANITARY INSP.,
D.O.T., O.C.H., O.C.P., D.P.W., ~~WATER~~, SEWER, HIGHWAY, REVIEW
FORM:

The maps and plans for the Site Approval _____

Subdivision _____ as submitted by

Cruce & Hibbith for the building or subdivision of
Wind in the Willows - Day Care Center has been
reviewed by me and is approved ☒

~~disapproved~~ _____

~~If disapproved, please list reason~~

There is town water feeding this property.

HIGHWAY SUPERINTENDENT

Steu D. D.
WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

DATE

✓
CC: H.E.

OCT 18 1990

90-46

Orig.

BUILDING INSPECTOR, PLANNING BOARD ENGINEER, FIRE INSPECTOR, ~~SANITARY INSP.~~,
D.O.T., O.C.H., O.C.P., D.P.W., WATER, SEWER, HIGHWAY, REVIEW
FORM:

The maps and plans for the Site Approval ✓

Subdivision _____ as submitted by
Greaves and Hildreth for the building or subdivision of
Wind in the Willow has been
reviewed by me and is approved ✓

disapproved _____

If disapproved, please list reason _____

sewer lines are available in this area

HIGHWAY SUPERINTENDENT

WATER SUPERINTENDENT

Luman D. Masten Jr.

SANITARY SUPERINTENDENT

October 19, 1990
DATE

CC: M.E.

Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, NY 12550

(This is a two-sided form) OCT 18 1990

Date Received _____
Meeting Date _____
Public Hearing _____
Action Date _____
Fees Paid _____

APPLICATION FOR SITE PLAN, ~~LOT LINE CHANGE~~
~~OR SUBDIVISION PLAN APPROVAL~~

1. Name of Project WIND IN THE WILLOWS, INC - DAY CARE CENTER
2. Name of Applicant WIND IN THE WILLOWS, INC Phone 561-4515
Address P.O. Box 332 NEWBURGH N.Y. 12550
(Street No. & Name) (Post Office) (State) (Zip)
ESTATE OF GERALDINE CARFORA
3. Owner of Record EXECUTOR: LISA TURNER Phone 534-7711
Address SILVER STREAM TRAILER PARK NEW WINDSOR
(Street No. & Name) (Post Office) (State) (Zip)
4. Person Preparing Plan GREVAS & HILDRETH, L.S., P.C. Phone 562-8667
Address 33 QUASSACK AVENUE NEW WINDSOR N.Y. 12550
(Street No. & Name) (Post Office) (State) (Zip)
5. Attorney DEAKE, SOMMERS, LOEB, TARSNIS & CATANIA Phone 565-1100
Address 1 COLWIN COURT NEWBURGH N.Y. 12550
(Street No. & Name) (Post Office) (State) (Zip)
6. Location: AT the NORTHWEST INTERSECTION of WALSH AVENUE
AND PLYMPTON STREET
(Street) (Direction)
of _____
(Street)
7. Acreage of Parcel 1.86± 8. Zoning District PI
9. Tax Map Designation: Section 14 Block 8 Lot 6
10. This application is for SITE PLAN
11. Has the Zoning Board of Appeals granted any variance or a special permit concerning this property? NO

APPROVED BY _____
DATE _____
BY _____

If so, list Case No. and Name N/A

12. List all contiguous holdings in the same ownership NONE
Section _____ Block _____ Lot(s) _____

Attached hereto is an affidavit of ownership indicating the dates the respective holdings of land were acquired, together with the liber and page of each conveyance into the present owner as recorded in the Orange County Clerk's Office. This affidavit shall indicate the legal owner of the property, the contract owner of the property and the date the contract of sale was executed.

IN THE EVENT OF CORPORATE OWNERSHIP: A list of all directors, officers and stockholders of each corporation owning more than five percent (5%) of any class of stock must be attached.

OWNER'S ENDORSEMENT
(Completion required ONLY if applicable)

COUNTY OF ORANGE

SS.:

STATE OF NEW YORK

_____ being duly sworn, deposes and says
that he resides at _____
in the County of _____ and State of _____
and that he is (the owner in fee) of _____
(Official Title)
of the Corporation which is the Owner in fee of the premises
described in the foregoing application and that he has authorized
_____ to make the foregoing
application for Special Use Approval as described herein.

I HEREBY DEPOSE AND SAY THAT ALL THE ABOVE STATEMENTS AND INFORMATION, AND ALL STATEMENTS AND INFORMATION CONTAINED IN THE SUPPORTING DOCUMENTS AND DRAWINGS ATTACHED HERETO ARE TRUE.

Sworn before me this

17th day of October 1990

Patricia A. Barnhart
Notary Public

PATRICIA A. BARNHART
Notary Public, State of New York
No. 01BA4904434
Qualified in Orange County
Commission Expires August 31, 1991.

~~(Owner's Signature)~~
Calvin Hughes
(Applicant's Signature)
APPLICANT / PRESIDENT
(Title)
WIND IN THE WILLOWS, INC.

REV. 3-87

SHORT ENVIRONMENTAL ASSESSMENT FORM - 90 - 46

For UNLISTED ACTIONS Only

PART I—PROJECT INFORMATION (To be completed by Applicant or Project sponsor)

1. APPLICANT /SPONSOR <u>WIND IN THE WILLOWS, INC.</u>	2. PROJECT NAME <u>DAY CARE CENTER - SITE PLAN</u>
3. PROJECT LOCATION: Municipality <u>TOWN OF NEW WINDSOR</u> County <u>ORANGE</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) <u>NORTH WEST INTERSECTION OF WALSH AVENUE AND PLYMPTON STREET</u>	
5. IS PROPOSED ACTION: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: <u>CONVERSION OF EXISTING RESIDENCE TO DAY CARE CENTER</u>	
7. AMOUNT OF LAND AFFECTED: Initially <u>1.86 ±</u> acres Ultimately <u>1.86 ±</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly <u>BULK VARIANCES REQUIRED FROM ZONING BOARD OF APPEALS</u>	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency(s) and permit/approvals <u>N.Y.S. DEPARTMENT OF SOCIAL SERVICES (LICENSE TO OPERATE)</u>	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency name and permit/approval	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>N/A</u>	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/sponsor name: <u>WIND IN THE WILLOWS, INC.</u>	Date: <u>17 OCTOBER 1990</u>
Signature: <u>Calais Hughes</u>	<u>PRESIDENT, WIND IN THE WILLOWS, INC.</u>

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

PART II—ENVIRONMENTAL ASSESSMENT (To be completed by Agency)

A. DOES ACTION EXCEED ANY THRESHOLD IN 6 NYCRR, PART 617.12? If yes, continue the review process and use the FULL EAF. <input type="checkbox"/> Yes <input type="checkbox"/> No	
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.8? If No, a negative declaration may be superseded by another involved agency. <input type="checkbox"/> Yes <input type="checkbox"/> No	
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)	
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:	
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:	
C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:	
D. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? <input type="checkbox"/> Yes <input type="checkbox"/> No. If Yes, explain briefly	

PART III—DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed.

- ☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- ☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide on attachments as necessary, the reasons supporting this determination:

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from responsible officer)

Date

OCT 18 1990

TOWN OF NEW WINDSOR PLANNING BOARD
SITE PLAN CHECKLIST

ITEM

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Site Plan Title | 29. <input checked="" type="checkbox"/> Curbing Locations |
| 2. <input checked="" type="checkbox"/> Applicant's Name(s) | 30. <input checked="" type="checkbox"/> Curbing Through Section |
| 3. <input checked="" type="checkbox"/> Applicant's Address(es) | 31. <input checked="" type="checkbox"/> Catch Basin Locations |
| 4. <input checked="" type="checkbox"/> Site Plan Preparer's Name | 32. <input checked="" type="checkbox"/> Catch Basin Through Section |
| 5. <input checked="" type="checkbox"/> Site Plan Preparer's Address | 33. <input checked="" type="checkbox"/> Storm Drainage |
| 6. <input checked="" type="checkbox"/> Drawing and Revision Dates | 34. <input checked="" type="checkbox"/> Refuse Storage |
| 7. <input checked="" type="checkbox"/> 4"x2" Box for Approval Stamp. | 35. <input checked="" type="checkbox"/> Other Outdoor Storage |
| 8. <input type="checkbox"/> AREA MAP INSET | 36. <input checked="" type="checkbox"/> Area Lighting |
| 9. <input checked="" type="checkbox"/> Site Designation | 37. <input checked="" type="checkbox"/> Sanitary Disposal Sys. |
| 10. <input checked="" type="checkbox"/> Properties Within 500 Feet of Site | 38. <input checked="" type="checkbox"/> Water Supply/Fire Hydrants |
| 11. <input checked="" type="checkbox"/> Property Owners (Item #10) | 39. <input checked="" type="checkbox"/> Building Locations |
| 12. <input type="checkbox"/> PLOT PLAN | 40. <input checked="" type="checkbox"/> Building Setbacks (EXISTING) |
| 13. <input checked="" type="checkbox"/> Scale (1" = 50' or lesser) | 41. <input checked="" type="checkbox"/> Front Building Elevations |
| 14. <input checked="" type="checkbox"/> Metes and Bounds | 42. <input checked="" type="checkbox"/> Divisions of Occupancy |
| 15. <input checked="" type="checkbox"/> Zoning Designation | 43. <input checked="" type="checkbox"/> Sign Details |
| 16. <input checked="" type="checkbox"/> North Arrow | 44. <input type="checkbox"/> BULK TABLE INSET |
| 17. <input checked="" type="checkbox"/> Abutting Property Owners | 45. <input checked="" type="checkbox"/> Property Area (Nearest 100 sq. ft.) |
| 18. <input checked="" type="checkbox"/> Existing Building Locations | 46. <input checked="" type="checkbox"/> Building Coverage (sq. ft.) |
| 19. <input checked="" type="checkbox"/> Existing Paved Areas | 47. <input checked="" type="checkbox"/> Building Coverage (% of Total Area) |
| 20. <input checked="" type="checkbox"/> Existing Vegetation | 48. <input checked="" type="checkbox"/> Pavement Coverage (Sq. Ft.) |
| 21. <input checked="" type="checkbox"/> Existing Access & Egress | 49. <input checked="" type="checkbox"/> Pavement Coverage (% of Total Area) |
| <u>PROPOSED IMPROVEMENTS</u> | |
| 22. <input checked="" type="checkbox"/> Landscaping | 50. <input checked="" type="checkbox"/> Open Space (Sq. Ft.) |
| 23. <input checked="" type="checkbox"/> Exterior Lighting | 51. <input checked="" type="checkbox"/> Open Space (% of Total Area) |
| 24. <input checked="" type="checkbox"/> Screening | 52. <input checked="" type="checkbox"/> No. of Parking Spaces Proposed. |
| 25. <input checked="" type="checkbox"/> Access & Egress | 53. <input checked="" type="checkbox"/> No. of Parking Required. |
| 26. <input checked="" type="checkbox"/> Parking Areas | |
| 27. <input checked="" type="checkbox"/> Loading Areas | |
| 28. <input checked="" type="checkbox"/> Paving Details (Items 25-27) | |

This list is provided as a guide only and is for the convenience of the Applicant. The Town of New Windsor Planning Board may require additional notes or revisions prior to granting approval.

PREPARER'S ACKNOWLEDGEMENT:

The Site Plan has been prepared in accordance with this checklist and the Town of New Windsor Ordinances, to the best of my knowledge.

By: William B. Nield, L.S.
Licensed Professional

Rev. 3-87

Date: 17 October 1990

***TO BE PROVIDED IF AND AS REQUIRED**

OCT 18 1990

AFFIDAVIT

STATE OF NEW YORK)
 : SS.:
COUNTY OF ORANGE)

LISA A. TURNER, being duly sworn, deposes and says:

1. That I reside at 103 Silver Stream Mobile Home Park,
Town of New Windsor, Orange County, New York.

2. That I am the duly appointed Executrix of the Estate
of Geraldine G. Carfora, deceased.

3. That the Estate of Geraldine G. Carfora is the fee
owner of the premises located at No. 257 Walsh Avenue, Town of
New Windsor, Orange County, New York 12553 (Tax Map Section 14,
Block 8, Lot 6).

DATED: New Windsor, New York
August 27, 1990

Lisa A. Turner
Lisa A. Turner, Executrix of
the Estate of Geraldine G.
Carfora

Sworn to before me this 27th
day of August, 1990.

Carol A. Lynn
Notary Public

CAROL A. LYNN
NOTARY PUBLIC, State of New York
Residing in Orange County
4527111
Commission Expires 11/30/90

OCT 18 1990

PROXY STATEMENT

for submittal to the

TOWN OF NEW WINDSOR PLANNING BOARD

LISA A. TURNER, deposes and says that she
resides at 103 Silver Stream Mobile Home Park, New Windsor, New York
(Owner's Address)

in the County of Orange

and State of New York 12553, and she is the Executrix of the Estate
of Geraldine G. Carfora, which is the
~~and that he is the~~ owner in fee of 257 Walsh Avenue, New Windsor,
Orange County, New York

which is the premises described in the foregoing application and
that she has authorized The Wind in the Willows, Inc.,
to make the foregoing application as described therein.

Date: August 27, 1990

Lisa A. Turner
(Owner's Signature)

Lisa A. Turner, Executrix of
the Estate of Geraldine G. Carfora

Carol B. Lynn
(Witness' Signature)

AREA
81,211+/- S.F.
NET AREA
68,735+/- S.F.

PI ZONE BULK TABLE
PROFESSIONAL BUSINESS USE

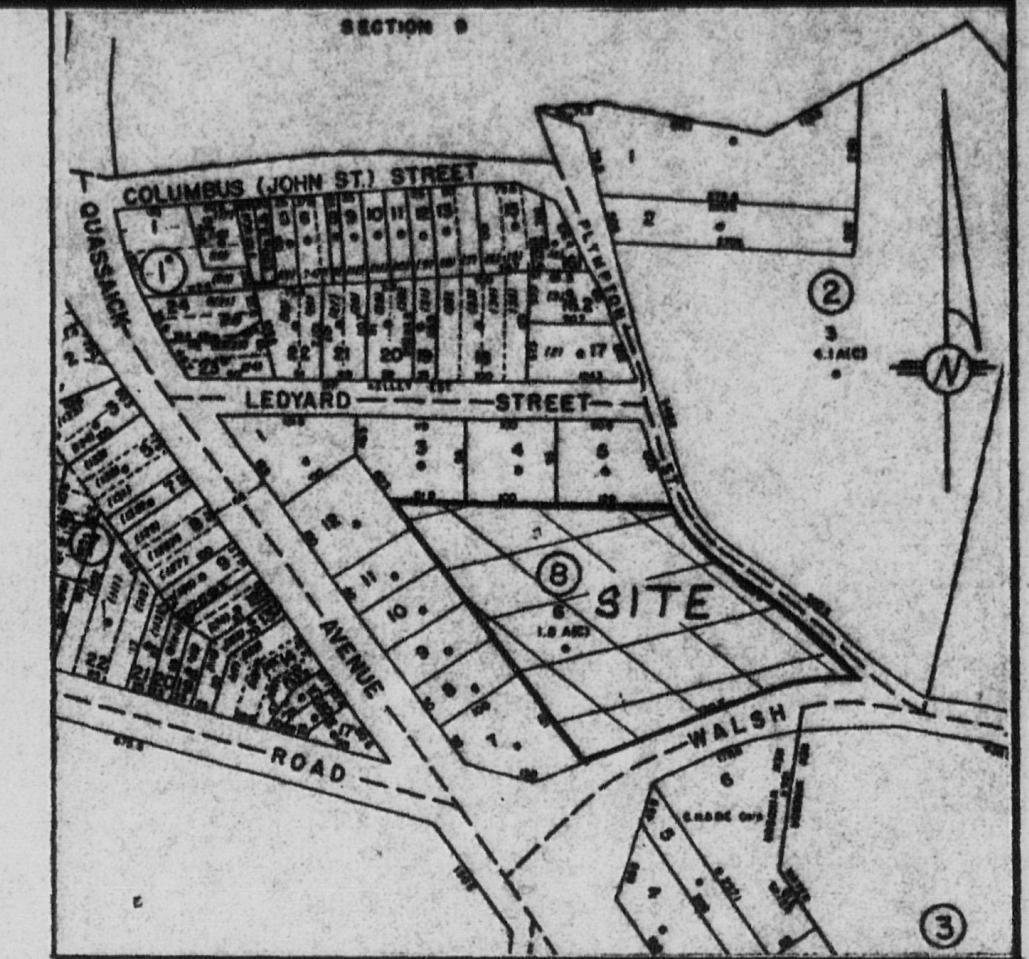
Lot Area	Lot Width	Front Yard Set Back	Side Yard Set Back	Rear Yard Set Back
Required: 80,000 SF	200'	100'	50'/110'	50'
Provided: 81,211 SF (gross)	275'+/-	89.3*	106/216 +/-	110'+/-
68,735 SF (net)*		93.6*		

Max. Bld'g Hgt.	Floor Area Ratio
Required: 4'/FT = 29'-9"	0.2
Provided: 32'*	<0.1

* Variance required

SPECIAL SITE PLAN NOTES*

BASEMENT/FIRST FLOOR USE: DAY CARE
SECOND FLOOR USE: DAY CARE & OFFICE
ATTIC USE: NONE (CLOSED OFF)
AGE GROUPS: 12 WEEKS TO 12 YEARS
HOURS OF OPERATION: 6:30AM TO 6:00 P.M.
(3 TRAFFIC MOVEMENTS)
MAXIMUM CAPACITY: 75 CHILDREN
* PER APPLICANT



AREA LOCATION PLAN
SCALE: 1"=200'

NOTES

- Being a proposed development of lands shown on the Town of New Windsor Tax Maps as Section 14, Block 8, Lot 6.
- PROPERTY ZONE: PI
- PROPOSED USE: Day Care Center (Professional Business)
- APPLICANT/CONTRACT VENDEE: Wind in the Willows, Inc. P.O. Box 332 Newburgh, NY 12550
- WATER SUPPLY AND SANITARY SEWAGE DISPOSAL: Town of New Windsor
- Boundary and Topographic information shown hereon resulted from a field survey performed by the undersigned and completed on 1 October 1990.
- Unauthorized alteration or addition to this plan is a violation of Section 7209 (2) of the New York State Education Law.

PARKING SPACE CALCULATIONS

Business use requires 1 space/200 SF of floor area
5,004+/- SF = 25 spaces
Maximum Staff: 18 plus 2 volunteers = 20 spaces
PROVIDED: 28 spaces

PLANNING BOARD APPROVAL

Empty box for Planning Board Approval.

Grevas & Hildreth, P.C.
LAND SURVEYORS
53 QUASSACK AVENUE, NEW WINDSOR, NEW YORK 12550
TEL: (914) 542-5467

PLAN FOR:
WIND IN THE WILLOWS, INC.

REVISIONS	DATE	DESCRIPTION

TOWN OF NEW WINDSOR ORANGE COUNTY NEW YORK
Drawn: SRG
Checked:
Scale: 1"=30'
Date: 17 Oct. 1990
Job No: 90-078

